

Supplementary Legislative Consent Memorandum

Planning and Infrastructure Bill

Background

1. This further supplementary Legislative Consent Memorandum (LCM) has been lodged by Gillian Martin MSP, Cabinet Secretary for Climate Action and Energy, in accordance with Rule 9B.3.1 (c) of the Parliament's Standing Orders. It should be read in conjunction with the Scottish Government's previous memorandums on the Bill (LCM-S6-56¹ and LCM-S6-56a²).

2. The Planning and Infrastructure Bill³ 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. On 13 October 2025, the UK Government tabled an amendment to insert a new clause ("the Clause") after clause 28 of the Planning and Infrastructure Bill.

Content of the Bill

4. The Bill concerns 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. The UK Government requested legislative consent for a number of provisions in the Bill which extend to Scotland, and which the Parliament has already considered⁴ (see LCM-S6-56⁵ and LCM-S6-56a⁶).

5. The amendment will insert a new clause into the Bill titled "wind generation stations that may affect seismic array systems" (the Clause). The Clause will enable the Secretary of State to make regulations about planning permissions or consents in both England and Scotland relating to wind generation stations that may affect the functioning of a relevant seismic array system.

¹ LCM-S6-56: [Legislative Consent Memorandum](#)

² LCM-S6-56a: [Supplementary Legislative Consent Memorandum](#)

³ [Planning and Infrastructure Bill | Scottish Parliament Website](#)

⁴ <https://www.parliament.scot/chamber-and-committees/votes-and-motions/S6M-19276>

⁵ <https://digitalpublications.parliament.scot/Committees/Report/NZET/2025/6/26/6a3aa84c-6b1a-41d3-bfb6-469f2fb6eba8#Introduction>

⁶ <https://digitalpublications.parliament.scot/Committees/Report/NZET/2025/9/16/03972741-c283-472c-ab70-e4ca5f68702c#Introduction>

6. The purpose of the amendment is to enable the Ministry of Defence (MOD) to adopt a new policy approach to safeguarding the functioning of the Eskdalemuir Seismic Array⁷ (the Array) whilst enabling further onshore wind development in the area of the Array.

Provisions which require the consent of the Scottish Parliament

7. The Scottish Government considers that legislative consent is required for the Clause, as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament (namely, planning law) and creates powers for the Secretary of State to alter the executive competence of the Scottish Ministers by regulation. 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 the Clause is concerned.

8. In the Clause (subsection 1), the Secretary of State takes a power to make regulations about planning permissions or consents relating to wind generating stations that may affect the functioning of a relevant seismic array system. The Clause (subsection 2) defines a "relevant seismic array system" for the purposes of this provision.

9. Subsection 3 of the Clause specifies that the regulations may provide for an exclusion zone around the Array (in which no onshore wind farms can be built) and a restricted zone in which onshore wind farms can be built subject to strict seismic impact limits.

10. Subsections 4 and 5 of the Clause provide that the regulations may require a planning decision-maker (such as the Scottish Ministers or planning authorities) to refuse, decline to determine or accept a planning permission or relevant application for consent under the Electricity Act in Scotland in certain circumstances for onshore wind generating stations that are situated within an exclusion zone or a restricted zone, respectively. The regulations apply in a similar manner to the planning and consenting system in England.

11. In addition, subsections 4-8 provide that regulations for planning applications and applications for consent under the Electricity Act 1989 in the exclusion and restricted zones may require Scottish Ministers and planning authorities to:

- use specified information in a specific way when determining applications;
- seek the Secretary of State's views on the seismic impact of a planning application;

⁷ The Eskdalemuir Seismic Array is a seismological monitoring station in the Southern Uplands that was established in 1962 to detect seismic signs from nuclear explosions. Continuously operating and safeguarding the array ensures that the United Kingdom complies with its international obligations under the Comprehensive Nuclear Test Ban Treaty.

- refuse, decline to determine or accept, the application if the Secretary of State objects to it on grounds relating to the seismic impact of the proposals;
- have regard to guidance issued by the Secretary of State.

12. By regulation, the Secretary of State may also modify the process for determining an application (subsection 7) or may amend or repeal an Act of Parliament, or of the Scottish Parliament (subsection 9).

13. Subsections 10 to 13 contain the relevant procedures for the regulations, while subsection 14 includes various definitions.

14. The Scottish Government considers that the amendment would enable the Secretary of State to make changes to planning law in Scotland, encroaching upon an area of devolved legislative competence. Planning legislation is devolved to the Scottish Parliament and the amendment contains provisions applying to Scotland and which are for devolved purposes. The amendment would also enable regulations to be made by the Secretary of State to alter the way in which decisions are made on planning applications and on applications for consent under section 36 of the Electricity Act 1989 and so would alter the executive competence of the Scottish Ministers.

15. The UK Government's view is that the amendment does not require legislative consent as it relates to the reserved matters of defence and control of weapons of mass destruction. The UK Government recognises there is an impact on Scotland's fully devolved planning system, but considers that the impact on planning is very narrow and only in respect of a very small geographic area. However, in the view of the Scottish Government, that does not negate the need for the legislative consent process in accordance with Rule 9B.1 of the Standing Orders of the Parliament.

Reasons for recommending legislative consent

16. It has been a long-standing objective of the Scottish Government to resolve the barriers to development in the area of the Array. The new approach is expected to unlock an additional 4-6GW of onshore wind potential (subject to other considerations under the Electricity Act 1989 and planning legislation). This will have a substantial impact on enabling the Scottish Government to meet its onshore wind deployment ambitions and the UK Government to reach its Clean Power 2030 ambitions.

17. The Scottish Government agrees that the amendment does achieve the stated purpose of protecting the Array and is consistent with the policy solution developed by Scottish Government and industry through the Eskdalemuir Working Group. The Scottish Government agrees that process on a new policy approach has stalled in recent years and that enshrining the policy approach in legislation will enable more rapid progress to be made. The amendment is very narrowly focused on a small geographic area, with the exclusion zone also extending into England.

18. However, this amendment makes changes to the planning system in Scotland. Previous UK Governments have always accepted that the final decision on developments in Scotland remains with Scottish Ministers or Scottish planning authorities. This new approach of not seeking consent in this area risks setting a precedent within the UK Government that could erode the role of Scottish Ministers or Scottish planning authorities in other circumstances.

19. Given the impact on devolved powers and the executive competence of Scottish Ministers, the Scottish Government is concerned that the new clause does not include a formal role for Scottish Ministers in agreeing to the final regulations. The risks associated with this can in part be mitigated by the UK Government's commitment to continue to work collaboratively with the Scottish Government on a joint consultation on the agreed new policy approach expected in 2025. It is expected that this consultation would inform the content of the final regulations. The UK Government has also proposed a Memorandum of Understanding on ways of working around the development of the regulations and their future scope and have provided a draft of this for discussion.

20. The Scottish Government is nevertheless concerned that it has not been involved in the development of this amendment. There has been no meaningful opportunity to shape or comment on the amendment before drafting needed to be finalised. The Scottish Government has made clear to the UK Government that this process has not allowed for proper consideration, and that statutory requirements to respect and protect devolved responsibilities would be preferable to the non-statutory arrangements it has offered. The Scottish Government, through correspondence from the Cabinet Secretary for Climate Action and Energy to the UK Minister for Energy has also asked for a further amendment to be tabled at third reading to require Scottish Ministers formal consent to the regulations.

21. However, on this occasion, for the limited circumstances of resolving the ongoing issues concerning development near seismic array systems, the Scottish Government is prepared to recommend to the Scottish Parliament that it gives legislative consent to this Clause. This recommendation reflects the Scottish Government's support for the policy intention behind the amendment, on which the Scottish Government has worked with the UK Government over a period of time; the very focused, specific and limited nature of the provision both in its purpose of supporting international non-proliferation and its geographical extent; and the undertakings given by the UK Government to the Scottish Government on agreements on the future exercise of the powers in respect of developing the secondary legislation. The Scottish Government also notes that the provision applies to the planning systems in both Scotland and England to achieve its purpose.

22. In making this recommendation, the Scottish Government emphasises to the Parliament that this does not represent a precedent for other parts of the Scottish planning system, which remains wholly devolved and within the legislative competence of the Scottish Parliament. The Cabinet Secretary for Climate Action and Net Zero will write to UK Government Ministers to make this point clear.

Consultation

23. There has been no formal consultation on this specific amendment due to the speed at which it has been introduced and is progressing.

24. The UK Government and Scottish Government have been working together closely, with industry for a number of years on the policy approach which will be facilitated by this amendment.

Financial implications

25. There are no financial implications arising directly from the provisions of the amendment.

Other relevant considerations

26. The LCM was made necessary by amendments at the Report Stage within the House of Lords in the Westminster process leaving less than a month between the amendment being provided to the Scottish Government on 10 October and the 3rd reading of the Bill in the House of Lords being scheduled for 4 November.

27. The scale of onshore wind deployment unlocked if this new policy approach is achieved is significant to the overall Clean Power 2030 mission, which aims to deliver cheaper and cleaner power by 2030 across Britain. This is therefore pushing the UK Government to move at pace to make this last minute amendment to the Planning and Infrastructure Bill rather than waiting for a future legislative slot.

Post EU scrutiny

28. There are no EU alignment issues.

Conclusion

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

30. The Scottish Government recommends that the Scottish Parliament consents to the new Clause, inserted after Clause 28, which provides for the Secretary of State to make regulations about planning permissions or consents relating to wind generating stations that may affect the functioning of a relevant seismic array.

Draft motion on legislative consent

31. The draft motion, which will be lodged by the Cabinet Secretary for Climate Action and Energy, is:

“That the Parliament, in relation to the Planning and Infrastructure Bill, introduced in the House of Commons on 11 March 2025, consent to a new Clause, inserted after Clause 28, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, to be considered by the UK Parliament.”

Scottish Government
October 2025

This Supplementary Legislative Consent Memorandum relates to the Planning and Infrastructure Bill (UK legislation) and was lodged with the Scottish Parliament on 24 October 2025

Planning and Infrastructure Bill – Supplementary Legislative Consent Memorandum

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