

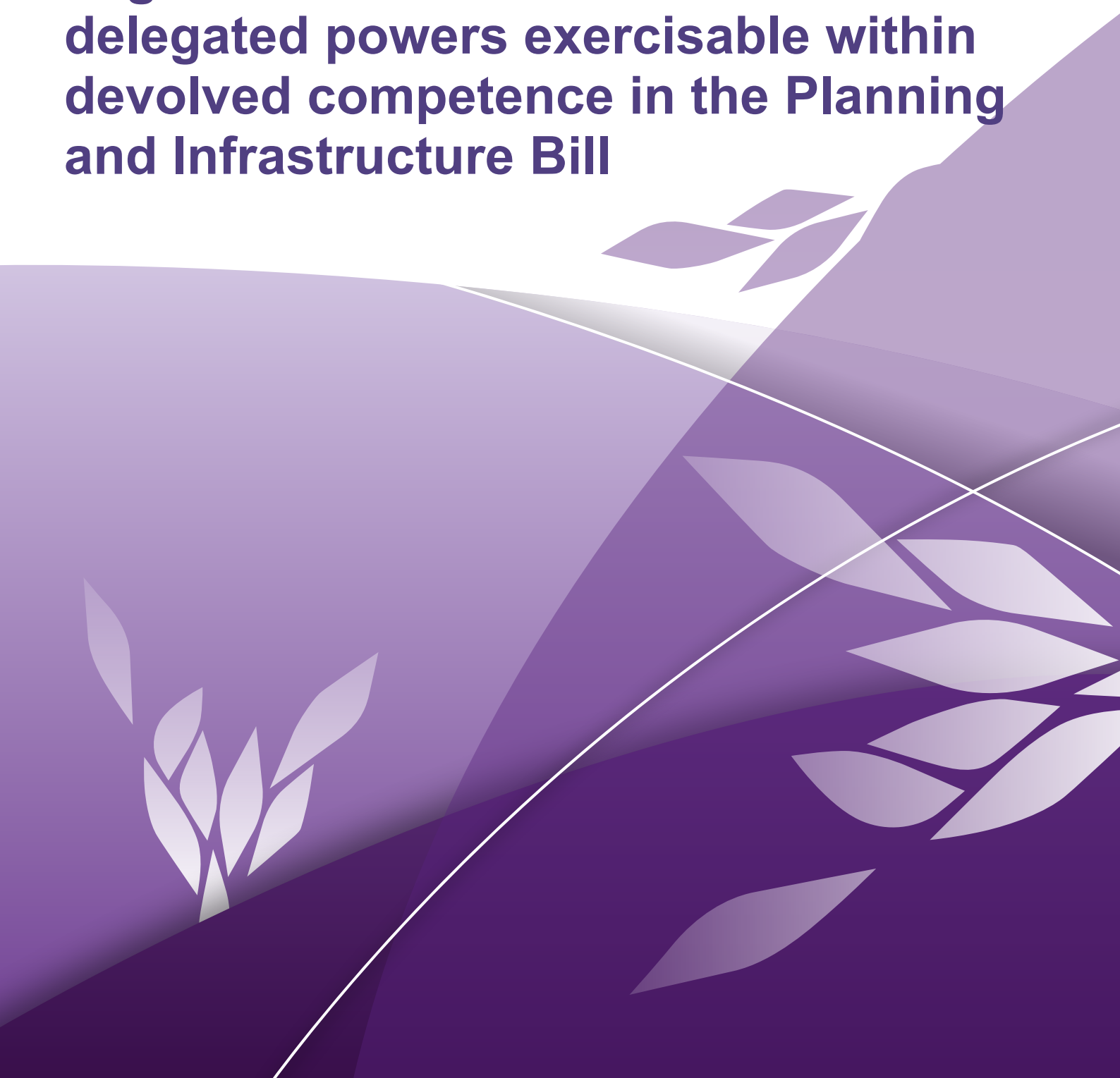


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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Planning and Infrastructure Bill



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meetings on 6 and 20 May 2025, the Committee considered the [Legislative Consent Memorandum](#) ("LCM") lodged by the Scottish Government in respect of the [Planning and Infrastructure Bill](#) ("the Bill").
2. The Committee is considering the LCM by virtue of Rule 9B.3.6 of the Scottish Parliament's Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is subject to an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
3. The LCM is also being considered in terms of the Committee's wider remit contained in Rule 6.11.1(b) of the Standing Orders which provide that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills "or other proposed legislation". The Committee and its predecessor Committee have considered powers conferred on UK Ministers in devolved areas in various Bills over the course of sessions 5 and 6.
4. The lead committee in respect of the LCM is the Net Zero, Energy and Transport Committee.

Overview of the Bill

5. The Planning and Infrastructure Bill was introduced by the UK Government in the House of Commons on 11 March 2025. The second reading took place on 24 March 2025 and the Bill has now been moved to the committee stage. The relevant Committee is expected to report back to the House of Commons by Thursday 22 May 2025. As the Bill is still progressing through the UK Parliament, it is subject to amendment. The Committee may therefore need to consider a supplementary LCM in due course.
6. This is a substantial Bill made up of 6 parts (97 clauses) and 6 schedules. Most of the provisions apply to England and Wales however some provisions, relating to electricity and harbours, apply to Scotland. The stated purpose of the Bill is to speed up and streamline the delivery of new homes and critical infrastructure. It is stated in the Explanatory Notes for the Bill that it will support ambitions in the UK Government's 'Plan for Change', which encompasses delivery of 1.5 million homes and deciding 150 nationally significant infrastructure projects (NSIPs) before the end of the 2024 parliament. The Bill also supports delivery of the government's Clean Power 2030 target by ensuring that clean energy projects are built as quickly as possible.
7. The Scottish Government lodged the LCM for the Bill on 27 March 2025. The Scottish Government supports the Bill and states that it recommends consent to the relevant provisions, with the exception of clause 42 (with clause 96(1)(z1)) until clarification about its effect is provided.

Delegated Powers

8. The UK Government has published a [Delegated Powers Memorandum](#) (“DPM”) to accompany the Bill. It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.
9. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s view on the relevant clauses is set out in the LCM.
10. At its meeting on 6 May, the Committee was content with the delegated powers in the following provisions:
 - Clause 17, inserting paragraph 6A in Schedule 4 to the Electricity Act 1989: power to make provision about fees for applications for wayleaves; and
 - Clause 42, inserting paragraph 9A(1) in Schedule 3 to the Harbours Act 1964: power to provide for fees for harbour revision orders.
11. It wrote to the [Scottish](#) and [UK Governments](#) on the other powers. The responses, from both [Scottish](#) and [UK Governments](#), are considered in full below.

Review of relevant powers

Part 1, Chapter 2– Consents for Electricity Infrastructure in Scotland

12. The Committee notes that electricity is a reserved matter under Head D1 of Schedule 5 of the Scotland Act 1998. However, the Scottish Ministers were given executive competence by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999ⁱ to administer and determine applications for consents made under sections 36 and 37 of the Electricity Act 1989 (the "1989 Act").
13. In this Chapter of the Bill, 7 of the clauses provide for the UK Ministers or the Scottish Ministers to exercise powers which relate to the electricity consenting process and are within the executive competence of the Scottish Ministers. One of the clauses provides for the Scottish Ministers solely to exercise the power within executive competence. The Committee notes that the Scottish Parliament does not have competence to legislate for these matters.

Powers exercised by UK Government Ministers and Scottish Ministers within executive competence

Provisions

14. Clause 14 amends Schedule 8 of the 1989 Act to confer three new delegated powers concurrently on the Secretary of State and the Scottish Ministers, as follows:
 - power to provide further detail about the application process for consents (new paragraph 1A);
 - power to set out further rules of procedure to be followed by a reporter when appointed to consider and report to the Scottish Ministers on an application (new paragraph 2A(12)); and
 - power to specify time limits for various parts of the consent process (new paragraph 7B).
15. Clause 15 inserts new sections 37A, 37B and 37C in the 1989 Act, conferring three new delegated powers concurrently on the Secretary of State and the Scottish Ministers, as follows:
 - power to set out the process for varying a section 37 consent to install overhead lines (s.37A(2));
 - power to set out the process for varying consents under s.36 or s.37 due to a change of circumstances (s.37B(2)); and
 - power to set out the process for correction of errors in consent documents (s.37C(4)).

ⁱ S.I. 1999/1750

16. Clause 20 confers a power on the Secretary of State or the Scottish Ministers to make regulations to amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/101).
17. Each power is discussed in more detail below.

Clause 14(2), inserting new paragraph 1A in Schedule 8 of the Electricity Act 1989: power to make provision about applications made to the Scottish Ministers for consent under sections 36 or 37 of the 1989 Act

Power conferred on: Secretary of State and Scottish Ministers concurrently

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative

18. Clause 14 of the Bill inserts new paragraphs 1A, 2A and 7B into Schedule 8 of the 1989 Act. Under that Act, consent from the Scottish Ministers is required for (a) the construction, extension and operation of generating stations (section 36), and (b) the installation of overhead lines (section 37). These consents are to be sought by way of an application, following the rules and procedure set out in Schedule 8.
19. Clause 14(2) inserts a new paragraph 1A into Schedule 8 of the 1989 Act. It gives a power to the Secretary of State or the Scottish Ministers to make regulations about various matters listed in sub-paragraph (2). These matters set out more detail to the application process, including the information to be provided when making an application, fees to be paid, the acceptance stage by Scottish Ministers, and requests by Scottish Ministers for additional information from the applicant.
20. Regulations made under this power are subject to the negative procedure. Following amendments made by Clause 18 of this Bill to section 106 of the 1989 Act, the Secretary of State must consult the Scottish Ministers before making regulations under this power, and vice versa.

Clause 14(4), inserting new paragraph 2A(12) in Schedule 8 of the Electricity Act 1989: power to amend the procedure for a reporter considering an objection to an application

Power conferred on: Secretary of State and Scottish Ministers concurrently

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative

21. Clause 14(4) of the Bill inserts a new paragraph 2A into Schedule 8 of the 1989 Act. As set out above, Schedule 8 governs the process when an application is made under sections 36 or 37 of the 1989 Act for Scottish Ministers' consent to electricity generating stations or overhead lines.
22. When a relevant planning authority objects to an application, paragraph 2 of Schedule 8 requires a public inquiry to be held. Clause 14(3) of the Bill amends this requirement to instead require a reporter to be appointed and produce a report that the Scottish Ministers must consider in their determination of the application.
23. Clause 14(4) sets out certain rules of procedure that the reporter must follow in sub

paragraphs 2A(1) to (11). Paragraph 2A(12) then creates a power for the Secretary of State or the Scottish Ministers to make regulations amending these provisions, or setting out further detail about the procedure the reporter must follow. This is a “Henry VIII” power, meaning that it can be used to amend primary legislation.

24. Regulations made under the new paragraph 2A(12) of the 1989 Act will be subject to the affirmative procedure. Following amendments made by this Bill to section 106, the Secretary of State must consult the Scottish Ministers before making regulations under this power, and vice versa.

Clause 14(5), inserting new paragraph 7B in Schedule 8 of the Electricity Act 1989: power to specify time limits for actions in relation to applications for consent under sections 36 and 37

Power conferred on: Secretary of State or Scottish Ministers concurrently

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative

25. Clause 14(5) of the Bill inserts a new paragraph 7B into Schedule 8 of the 1989 Act. As set out above, Schedule 8 governs the process when an application is made under sections 36 or 37 of the 1989 Act for Scottish Ministers’ consent to electricity generating stations or overhead lines.
26. The new paragraph 7B(1) gives the Secretary of State and the Scottish Ministers the power to make regulations specifying time limits for various parts of the consent process under sections 36 and 37.
27. Sub paragraph (2) specifies that these time limits may include: the time that must be taken to comply with application requirements; to respond to a pre-application consultation; for the reporter to produce their advice; a planning authority to object; and the Scottish Ministers to decide an application. Under sub-paragraph (3), the regulations may also include provision about the consequences for failure to comply with a time limit.
28. This power is subject to the negative procedure. Following amendments made by this Bill to section 106, the Secretary of State must consult the Scottish Ministers before making regulations under this power, and vice versa.

Clause 15, inserting new section 37A(2) in the Electricity Act 1989: power to set out the process for varying a section 37 consent

Power conferred on: Secretary of State and Scottish Ministers concurrently

Exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative

29. Clause 15 inserts three new provisions into the 1989 Act: sections 37A, 37B and 37C. Sections 37B and 37C are considered below.
30. New section 37A provides that a person with a section 37 consent from the Scottish Ministers to install an electric line above ground may, by application, apply for that consent to be varied. Under section 37A(4), the Scottish Ministers are permitted to

make such variations as appears to be appropriate, considering the reasons, the proposed variation, and any objections.

31. Section 37A(2) gives power to the Secretary of State or the Scottish Ministers to make regulations about the applications process to vary a section 37 consent. These regulations may in particular make provision about:
 - (a) the making and withdrawal of applications;
 - (b) fees;
 - (c) publicity and consultation requirements;
 - (d) rights to make representations;
 - (e) public inquiries; and
 - (f) consideration of applications.
32. Regulations under section 37A(2) may also provide for any statutory provision which applies to the grant of a section 37 consent to also apply, with modifications, to a variation of the consent.
33. Regulations made under this provision will be subject to the negative procedure. Following amendments made by this Bill to section 106, the Secretary of State must consult the Scottish Ministers before making regulations under this power, and vice versa.

Clause 15, inserting section 37B(2) in the Electricity Act 1989: power to set out process for varying consents due to change of circumstances

Power conferred on: Secretary of State or Scottish Ministers concurrently

Exercisable by: Regulations made by statutory instrument

Statutory procedure: Negative

34. The second provision inserted by clause 15 into the 1989 Act is section 37B. This provides that the Scottish Ministers may vary a consent granted under sections 36 or 37 where they consider that it ought to be done because of:
 - (a) a change in circumstances relating to the environment, or
 - (b) technological changes.
35. The provision therefore provides a mechanism to vary a consent that is not dependent on application from the consent holder. However, this power can only be exercised with consent from the person entitled to the benefit of the section 36 or 37 consent.
36. Under section 37B(2) the Secretary of State or the Scottish Ministers are conferred a power to make provision by regulations about variations under this section. This includes: (a) the procedure for getting agreement, (b) publicity, notification and consultation requirements, and (c) rights to make representations.

37. This power is subject to the negative procedure. Following amendments made by this Bill to section 106, the Secretary of State must consult the Scottish Ministers before making regulations under this power, and vice versa.

Clause 15, inserting section 37C(4) in the Electricity Act 1989: power to set out the process for correction of errors in consent documents

Power conferred on: Secretary of State or Scottish Ministers concurrently

Exercisable by: Regulations made by statutory instrument

Statutory procedure: Negative

38. The third and final section inserted by Clause 15 into the 1989 Act is section 37C. This provision allows the Scottish Ministers to correct errors in decision documents relating to a consent granted under section 36 or 37, or a variation of those consents. The correction can be made on the Scottish Ministers' own accord or following a written request by the consent holder. The error is only correctable if it forms part of the decision and not part of the statement of reasons for the decision.
39. Section 37C(4) gives a power to the Secretary of State and the Scottish Ministers to make regulations to make provision about this correction process. That provision may include: (a) the making of written requests, (b) notification requirements, and (c) the right to make representations.
40. This power is subject to the negative procedure. Following amendments made by this Bill to section 106, the Secretary of State must consult the Scottish Ministers before making regulations under this power, and vice versa.

Committee consideration

41. At its meeting on 6 May 2025, the Committee was content with the delegation of the powers in clauses 14 and 15, their scope and the choice of parliamentary procedure.
42. The Committee also noted that the powers relate to matters for which the Scottish Ministers have executive competence (administering and determining applications for consents under sections 36 and 37 of the Electricity Act 1989), but which do not fall within the Scottish Parliament's legislative competence.
43. The powers are conferred jointly on UK and Scottish Ministers, with a requirement for Ministers (in either administration) to consult their counterparts in the other administration before making regulations under the powers.
44. The Committee had not previously taken a position on the exercise by UK Government Ministers of powers in relation to matters for which the Scottish Ministers have executive competence, but which do not form part of the Scottish Parliament's legislative competence.
45. Given the implications of this approach for Scottish Parliamentary scrutiny, the Committee agreed to ask both governments:

” “How decisions will be made about which administration will exercise these powers?”

46. It also agreed to ask the Scottish Government:

” “How the Scottish Government will facilitate Scottish Parliament scrutiny of the policy approach to making these regulations, where the power within devolved executive competence is exercised by the Secretary of State?”

47. In its response on both questions, the [Scottish](#) Government states that:

” “The consultation requirement ensures that either government must engage with the other before exercising these powers, respecting the complex devolution settlement in this area, where electricity is reserved, but consenting is executively devolved.

Whilst no formal decision-making mechanism as to which authority will exercise the powers is specified in the legislation, the general expectation shared by both governments is that the Scottish Government will bring forward these regulations and that they will be laid in the Scottish Parliament, reflecting the position that the planning system is a devolved matter and recognising the executively devolved role of the Scottish Ministers in administering applications for consent under the Electricity Act 1989.

Such regulations will set out further technical processes for consulting, considering and determining applications in Scotland, and therefore the Scottish Ministers will be best placed to decide what procedures are appropriate.”

48. It also states that:

” “Should any executive competence look to be exercised by the Secretary of State, we would first look to follow the established patterns of collaboration that produced the current Bill’s provisions, which were only agreed after many months of detailed work between officials, ensuring they were sufficient to garner the support of both governments.

The Scottish Government would then implement a notification period to facilitate the necessary parliamentary scrutiny. This would be proportionate to any changes being made and could include providing written notice to the relevant Scottish Parliament committee(s), making statements to the Scottish Parliament and appearing before any relevant committee(s) of the Scottish Parliament. Any notification would outline the substance of the proposed regulations, summarise the Scottish Government’s position and include the expected timeline for implementation.

This approach would ensure the Scottish Parliament has appropriate opportunities for scrutiny, whilst respecting the legal framework of concurrent powers that have been established by the Planning and Infrastructure Bill.”

49. In relation to the first question, the [response](#) from the Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government states :

” "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."

50. The Committee notes the UK Government and Scottish Government's position that there is a general expectation shared by both governments that the powers will be exercised by the Scottish Ministers, meaning that the regulations will be laid in the Scottish Parliament.
51. The Committee also notes that, in the event that a decision is taken that the Secretary of State should exercise the powers, the Scottish Government commits to implement a proportionate notification process to facilitate the necessary parliamentary scrutiny, including giving written notice to the relevant Scottish Parliament subject committee. The Committee draws that commitment to the attention of the lead committee for the LCM.

52. **The Committee is content with the powers conferred on the Scottish Ministers and the Secretary of State in principle and that they are subject to the negative procedure in the case of the powers conferred by clauses 14(2), 14(5) and 15, and affirmative in the case of the power conferred by clause 14(4).**
53. **Insofar as scrutiny by the Scottish Parliament is concerned, the Committee also:**
 - **notes both governments' position that there is a general expectation that the powers, which may be exercised by either the Scottish Ministers or the Secretary of State, will be exercised by the Scottish Ministers, meaning that the regulations will be laid in the Scottish Parliament;**
 - **notes that where the powers are exercised by the Secretary of State, there is a requirement to consult the Scottish Ministers in advance of making the regulations. The process set out in [Statutory Instrument Protocol 2](#) will not apply to any proposals to make such regulations;**

- **notes and draws to the attention of the lead committee that, in the event that a decision is taken that the Secretary of State should exercise the powers, the Scottish Government commits to implement a proportionate notification process to facilitate the necessary parliamentary scrutiny, including giving written notice to the relevant Scottish Parliament subject committee.**

Clause 20: power to amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

Power conferred on: Secretary of State and Scottish Ministers concurrently

Exercisable by: Regulations made by statutory instrument

Statutory procedure: Negative

Provision

54. Clause 20 confers a power on the Secretary of State or the Scottish Ministers to make regulations to amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/101) (“the 2017 Regulations”).
55. Under sections 36, 36C and 37 of the 1989 Act, the Scottish Ministers are required to assess any significant environmental effects arising from a proposed development before granting consent for electricity generation stations or overhead lines. This is achieved by requiring an environmental impact assessment (EIA) to be submitted by applications for certain developments. The requirements for these EIAs are set out in the 2017 Regulations.
56. Subsections (1) and (3) of Clause 20 of the Bill allow the Secretary of State or the Scottish Ministers to make amendments to the 2017 Regulations in order to make provision in connection with EIAs and applications for consent or variation of consent in relation to section 36 or 37 applications.
57. Regulations made under these powers may also make transitional, consequential or supplementary provision. This power is subject to the negative procedure and, under subsections (8) and (11), the Secretary of State and the Scottish Ministers must consult the other before making the regulations.

Committee consideration

58. At its meeting on 6 May 2025, the Committee was content with the delegation of the powers, their scope and the choice of parliamentary procedure.
59. In relation to the decision to confer the power on both the Secretary of State and the Scottish Ministers, the Committee asked both governments:

- ” “Why it has been decided that this power should be exercisable concurrently, rather than being conferred solely on the Scottish Ministers? And

Why it is subject to a requirement to consult the Scottish Ministers when exercised by the Secretary of State, rather than a requirement to obtain the Scottish Ministers’ consent?”

60. The Scottish Government responded as follows:

- ” “Prior to Brexit, Scottish Ministers had executively devolved power to amend these regulations through section 2(2) of the European Communities Act 1972. However, this power was lost when the UK left the European Union. The 2017 regulations remain in operation for applications under the 1989 Act in Scotland, but without any power for Scottish Ministers to amend them.

Powers being conferred solely to Scottish Ministers, and a requirement to obtain the Scottish Ministers’ consent if the powers are exercised by the Secretary of State, were not available options. The UK Government has highlighted that the generation and transmission of electricity is a reserved matter. The 2017 Regulations relate to the manner in which decisions are to be made in respect of applications under sections 36 and 37 of the 1989 Act for consent in relation to such reserved matters.

Therefore, whilst restoration of the previous position would have been preferred, Clause 20 is supported, as it allows for modifications, efficiencies and alignments in process, that will have benefits in the processing of Electricity Act 1989 applications.

This is a pragmatic position acknowledging that the clause does provide some needed procedural flexibility to ensure the continued effective operation of the 2017 Regulations alongside other updates to the electricity infrastructure consenting process in Scotland.”

61. The Committee notes the Scottish Government’s view that the 2017 Regulations relate to the manner in which decisions are to be made in respect of applications for consent in relation to the reserved matter of the generation and transmission of electricity. The power to make the 2017 Regulations was executively devolved to the Scottish Ministers, and is exercisable concurrently with the Secretary of State.
62. That being the case, the Committee is content that the power in clause 20 is exercisable concurrently with the Secretary of State, and is subject to a requirement to consult the Scottish Ministers in advance of any exercise by the Secretary of State, rather than a consent requirement.
63. In addition, the Committee asked the governments the same questions as for the powers in clauses 14 and 15, that is:

” “How decisions will be made about which authority will exercise these powers?” (question to both governments), and

“How the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of the policy approach to making these regulations, where the power within devolved executive competence is exercised by the Secretary of State?” (question to the Scottish Government only).

64. Both governments’ responses for clauses 14 and 15, discussed above, apply equally to clause 20.
65. The Committee therefore notes both governments’ position that there is a general expectation that the power will be exercised by the Scottish Ministers, meaning that the regulations will be laid in the Scottish Parliament.
66. The Committee also notes that, in the event that a decision was to be taken that the Secretary of State should exercise the power, the Scottish Government commits to implement a proportionate notification process to facilitate the necessary parliamentary scrutiny, including giving written notice to the relevant Scottish Parliament subject committee. The Committee draws that commitment to the attention of the lead committee for the LCM.

67. **The Committee is content with the power conferred on the Scottish Ministers and the Secretary of State in principle and that it is subject to the negative procedure.**
68. **Insofar as scrutiny by the Scottish Parliament is concerned, the Committee also:**
 - **Notes the both Governments' position that there is a general expectation that the power, which may be exercised by either the Scottish Ministers or the Secretary of State, will be exercised by the Scottish Ministers, meaning that the regulations will be laid in the Scottish Parliament;**
 - **Notes that where the powers are exercised by the Secretary of State, there is a requirement to consult the Scottish Ministers in advance of making the regulations. The process set out in [Statutory Instrument Protocol 2](#) will not apply to any proposals to make such regulations;**
 - **Notes and draws to the attention of the lead committee that, in the event that a decision is taken that the Secretary of State should exercise the power, the Scottish Government commits to implement a proportionate notification process to facilitate the necessary parliamentary scrutiny, including giving written notice to the relevant Scottish Parliament subject committee.**

Clause 17, inserting paragraph 6A in Schedule 4 to the Electricity Act 1989: power to make provision about fees for applications for wayleaves

Power conferred on: Scottish Ministers

Exercisable by: Regulations made by statutory instrument**Statutory procedure: Negative***Provision*

69. Clause 17 inserts a new paragraph 6A into Schedule 4 of the 1989 Act. Paragraph 6 governs the process by which a person with an electricity licence may be given statutory rights ('wayleaves') to install and access electricity lines and associated infrastructure on land owned by others. Paragraph 6(3) provides that where a landowner declines to provide a necessary wayleave, the Scottish Ministers may grant it, after providing that occupier or owner an opportunity to be heard.
70. New paragraph 6A will provide a power for the Scottish Ministers to make provision about the fees to be paid in relation to applications made under paragraph 6(3) to grant necessary wayleaves. The power is subject to the negative procedure.

Committee consideration

71. The DPM explains that fees for processing applications for necessary wayleaves are already charged in England and Wales under a power in section 188 of the Energy Act 2004. This was used to enact the Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013 (SI 2013/1986). Fees are then used to fund the resourcing requirements for processing the applications efficiently. At present, the Scottish Ministers do not have an equivalent power. This provision would put Scotland on a par with England and Wales.
72. The DPM further explains that there is an expectation for the number of wayleaves applications in Scotland to increase in subsequent years. There have been around 40 received each year, however, Transmission Operators advise that over 1000 applications could be made in 2025 alone. This will have a negative impact on financial and staffing pressures. The LCM explains that so far, the costs for administering these applications has been absorbed, but the extant policy is to recover them in full.
73. The UK Government consider that it is common for fee charging to be set out in secondary legislation, that this power concerns a discrete matter, and it is tightly constrained. For these reasons, it is also appropriate for the power to be subject to the negative procedure.
74. The functions in paragraph 6 of Schedule 4 of the 1989 Act, in so far they are exercisable in or as regards Scotland, were transferred solely to the Scottish Ministers by Schedule 1 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/1750). The Committee therefore considers it appropriate that the regulation-making power is conferred solely on the Scottish Ministers.
75. The Committee is also content that there is adequate policy justification provided for taking the power and is content that it is subject to the negative procedure.

- 76. The Committee is content with the power conferred on the Scottish**

Ministers in principle and content that it is subject to the negative procedure.

Part 1, Chapter 3: Transport Infrastructure – Harbours

Clause 42, inserting paragraph 9A(1) in Schedule 3 to the Harbours Act 1964: power to provide for fees for harbour revision orders

Power conferred on: Scottish Ministers

Exercisable by: Regulations made by statutory instrument

Statutory procedure: Negative

Provision

77. Clause 42 makes various amendments to the Harbours Act 1964 (the “1964 Act”). Schedule 3 of that Act governs the process for making a harbour revision or empowerment order: used to amend or create legislation improving, maintaining, or managing harbours around the UK.
78. Harbours are a devolved matter and the function of making decisions on harbour revision or empowerment orders under section 17 and Schedule 3 of the 1964 Act in relation to Scotland lies with the Scottish Ministers. In England, these functions are exercisable by the Secretary of State, and in Wales, by the Welsh Ministers.
79. The process for a harbour revision or empowerment order involves the applicant notifying the Scottish Ministers, a screening decision about whether it requires an environmental impact assessment, submission of an application containing the proposed order, public notice, consultation, objections and decision-making. Notably, paragraph (7)(c) of Schedule 3 allows the decision-maker to specify a fee that must accompany applications.
80. Subsection (4) of Clause 42 inserts a new paragraph 9A into Schedule 3 of the 1964 Act. It provides a power for the Scottish Ministers to make regulations for fees to be paid by applications for a harbour revision order in Scotland. These regulations may include the amount of the fee, allow for the application not to be progressed unless it is paid, and allow for deposits for fees that will, or may, become payable.
81. Regulations made under this provision are subject to the negative procedure by virtue of subsection (5) of Clause 42, amending section 54 of the 1964 Act. Neither consultation with, nor consent of, the Secretary of State is required before making the regulations.

Committee consideration

82. Under the current Schedule 3 paragraph 7(1) of the 1964 Act, applications for a harbour revision or empowerment order must already be accompanied by such fee as the Scottish Ministers determine, and under paragraph 9, the application will not be considered unless it is paid. Therefore, the Scottish Ministers already hold a power to determine fees accompanying these harbour orders. This power is

exercisable without notifying the Scottish Parliament of the level of the fees, nor how they were determined.

83. The power in paragraph 7(1) has been exercised by the Scottish Ministers and the current fees are available onlineⁱⁱ. Clause 42(2) of the Bill will remove this power to determine the fees, with new paragraph 9A of Schedule 3 replacing it with a regulation-making power.
84. The DPM suggests that the rationale for doing so is to afford parliaments with an opportunity to scrutinise the detail of the regulations and the method by which the amount of fees will be determined. In providing this power, the UK Government considers that the negative procedure would give parliament an opportunity for the right level of scrutiny given the discrete issue covered by these regulations.
85. The Committee considers that there are satisfactory policy reasons to justify taking a power and notes that this amendment provides for more parliamentary scrutiny than the existing power. Therefore, the Committee is content with this power in principle and content that it is subject to the negative procedure.

86. The Committee is content with this power in principle and that it is subject to the negative procedure.

Clause 96: power to make commencement and related ancillary provision

Power conferred on: Secretary of State

Exercisable by: Regulations made by statutory instrument

Statutory procedure: None

Provision

87. Clause 96 makes ancillary provision in relation to the Bill coming into force. Subsections (1)-(5) provide for when each section or part of the Bill will come into force. Subsection (7) provides that the Secretary of State may make transitional, transitory, or saving provision in connection with commencement.
88. Notably, clause 96(1)(z1)(ii) provides that section 42(2) (fees for applications for harbour orders) will come into force on such day as the Secretary of State may by regulations appoint.

Committee consideration

89. The existing power in Schedule 3 paragraph 7(1) of the Harbours Act 1964 for Scottish Ministers to determine fees for harbour revision or empowerment orders will be removed by clause 42(2)(b) of the Bill. Regulations will subsequently replace this power and provide for the fee-setting process, and those regulations can be made solely by the Scottish Ministers (Schedule 3 paragraph 9(1), as added by clause 42(4)).

ii See [Harbour orders | Formal applications | Transport Scotland](#). The fees vary between £2000 - £10,000.

90. However, commencement of clause 42(2) is on a day to be appointed in regulations made by the Secretary of State (clause 96(1)(z1)(ii)). This means that the decision and timing of the repeal of this provision is reliant on the Secretary of State making regulations for Scotland.
91. In its consideration on 6 May, the Committee noted that if the power in clause 96(1)(z1)(ii) was conferred on the Scottish Ministers, that would allow the Scottish Government to control the sequencing of the repeal, such that it aligns with when the Scottish regulations under new paragraph 9A of Schedule 3 of the 1964 Act are ready to come into force.
92. Accordingly the Committee agreed to ask the UK Government why it is considered appropriate that the power in clause 96(1)(z1)(ii) to repeal the existing provision in the 1964 Act on harbour revision order fees is conferred solely on the Secretary of State.
93. The [response](#) from the Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government states:

"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."

94. The Committee notes the need for alignment with regulations under new paragraph 9A of Schedule 3 of the 1964 Act, the timing of which is a matter for the Scottish Ministers. It also notes the UK Government's commitment to make the relevant commencement order in collaboration with the Scottish Ministers, and at a time of their choosing.
95. The Committee is otherwise content with the power to commence the provisions of the Bill by regulations made by the Secretary of State, and to make related ancillary provision. This is a standard commencement provision which enables the various Parts of the Bill to be commenced at an appropriate time.

96. The Committee is content with the power conferred by clause 96 on the Secretary of State in principle, and that it is not subject to parliamentary procedure.

97. The Committee also notes that:

- clause 96(1)(z1)(ii) provides for clause 42(2) of the Bill (repeal of existing provision on fees for applications for harbour revision orders) to be commenced on a day to be appointed in regulations made by the Secretary of State'**

- **it appears necessary that the commencement of clause 42(2) is aligned with regulations under new paragraph 9A of Schedule 3 of the 1964 Act (fees for harbour revision orders), the timing of which is a matter for the Scottish Ministers;**
- **the Secretary of State commits to commencing clause 42(2) in collaboration with the Scottish Ministers, and at a time of the Scottish Ministers' choosing.**

