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Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee Report on the Legislative Consent Memorandum on the Planning and Infrastructure Bill



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Net Zero and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



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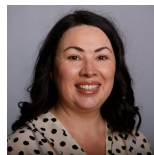
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Introduction

1. The [Planning and Infrastructure Bill](#) was introduced by the UK Government in the House of Commons on 11 March 2025. On 27 March 2025, the Scottish Government lodged a [Legislative Consent Memorandum \(LCM\)](#) on the Bill, which was subsequently referred to the Net Zero, Energy and Transport Committee for consideration.
2. The LCM states that the Bill is primarily aimed at accelerating housing development and infrastructure projects across England. The legislation seeks to deliver 1.5 million new homes and expedite decisions on 150 major infrastructure projects during the current UK Parliament. The Bill also supports the UK Government's "Clean Power 2030" initiative by removing barriers to clean energy projects.
3. The [explanatory note](#) accompanying the Bill provides a more detailed explanation of what the Bill does.
4. The LCM outlines the provisions that require the legislative consent of the Scottish Parliament. These are:
 - Part 1, clauses 14 to 20 and schedule 1: These update aspects of the consenting regime for larger electricity generating stations and overhead line developments, which are authorised by Scottish Ministers under the provisions of the Electricity Act 1989, to bring them into alignment with the Scottish planning system.
 - Clause 42: This provides enhanced powers for Scottish Ministers to recover costs associated with the handling of applications for port development.
 - Clause 96: This makes commencement and transitional provision in relation to the above clauses.
5. A draft motion on legislative consent, which will be lodged by the Scottish Government, is included in the LCM. It states:

” That the Scottish Parliament agrees, in relation to the Planning and Infrastructure Bill introduced to the House of Commons on 11 March 2025, clauses 14–20, and clause 96 (except clause 96(1)(z1)), so far as these matters alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament and further that the Scottish Parliament refuses consent for clause 42 and clause 96(1)(z1), 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.”

Background

Part 1 clauses 14 to 20 - consenting regime for larger electricity generating stations and overhead line developments

6. Under the Electricity Act 1989, there are two approval regimes for energy generation developments in Scotland. These are:

1. Proposed generating stations with an installed capacity under 50 megawatts are considered and authorised by planning authorities under Scottish planning legislation.
2. Proposed generating stations with a capacity of 50 megawatts plus are considered and authorised by Scottish Ministers under section 36 of the Electricity Act 1989.
7. Overhead line developments are authorised by Scottish Ministers under section 37 of the Electricity Act 1989.
8. While Scottish Ministers have executive competence to decide on major electricity development proposals, they cannot update the legislation that underpins the decision-making process, as electricity is a reserved matter. Scottish Government officials have been working with UK counterparts to bring forward amendments to this system to align it with the Scottish planning system. The key changes proposed include:
 - Scottish and UK Ministers will have concurrent powers to make regulations covering issues such as pre-application consultation and notification, and information to be provided in support of an application. Regulations could allow for the creation of an ‘assessment stage’, allowing Scottish Ministers to assess an applicant’s compliance with consultation and information requirements, and request additional information from an applicant where required. Regulations may also specify fees payable to Scottish Ministers for handling electricity related applications.
 - The current automatic requirement for a Public Local Inquiry to be held where a planning authority objects to a proposed electricity application would be removed and replaced with a requirement that the Reporter appointed to consider the objection decides the most appropriate process – inquiry, informal hearing, or written submission, as currently happens in the planning system. The aim being to ensure a proportionate approach is adopted, and to minimise costs and delay to everyone involved in the process.
 - Scottish or UK Ministers could, by regulations, set time limits for actions to be completed within the consenting regime.
 - Introducing a process allowing consents for overhead line projects to be varied, without the need to submit an entirely new application.
 - Allowing Scottish Ministers to correct errors in decision documents.
 - Extending the current statutory right to legally challenge a Scottish Ministerial decision taken under Section 36 of the Electricity Act 1989, i.e. generating stations, to also apply to Section 37 decisions, i.e. overhead lines.
 - Reducing the time available for lodging a legal challenge to a Scottish Ministerial decision on an onshore electricity generating station from three months to six weeks, bringing it into line with the time available to challenge decisions on offshore wind farms.
 - Providing concurrent regulation-making powers to Scottish and UK Ministers,

allowing for minor procedural changes to be made to Environmental Impact Assessment (EIA) regulations. The LCM notes that the UK Government intends to replace the EIA system with a new Environmental Outcomes Report (EOR) scheme, the intention is that Scottish Ministers will have regulation-making powers on EORs with regard to electricity developments.

9. The Scottish Government considers that clauses 14–20 and 96 (as it applies to clauses 14–20) are essential to deliver the reforms necessary to modernise the consenting regime in Scotland for applications made under the 1989 Act. As a result, the Scottish Government considers that the Scottish Parliament should provide legislative consent for clauses 14-20, and clause 96 as it relates to those clauses.

Clause 42 - Costs associated with the handling of applications for port development

10. The Bill would remove current powers allowing Scottish and UK Ministers to set fees for processing Harbour Ordersⁱ, replacing this with a Scottish Ministerial regulation-making power to establish a system for setting Harbour Order fees. Scottish Ministers are content with this approach but have raised concerns around the commencement of this provision (under clause 96 - see below) by the UK Government.

Clause 96: Commencement and Transitional Provisions

11. Clause 96 sets out commencement and transitional provision for the Bill, including for the clauses outlined above. Consent is therefore required to this clause insofar as it relates to these other clauses. It provides that only the Secretary of State, and not the Scottish Ministers, has the power to fully commence clause 42. The LCM says that Department of Transport officials have given assurances that commencement would be done by the Secretary of State at a time of the Scottish Ministers' choosing, but this is not legally binding.
12. The LCM gives examples of other Bills where commencement powers have been given to the Scottish Ministers directly and states that the Scottish Ministers not having this power "could create a risk that the Scottish Government would need to rely on UK Government resources and priorities to be available when the Scottish Ministers were in a position to commence". For that reason, the Scottish Government does not currently recommend consent to clause 42, or clause 96 insofar as it relates to clause 42. The LCM states that Scottish Government officials will continue to liaise with UK Government officials on this issue.

ⁱ Harbour Orders are a form of delegated legislation made under the Harbours Act 1964, which either amends existing harbour legislation or introduces new harbour legislation.

Net Zero, Energy and Transport Committee Consideration

13. The Committee wrote to a targeted group of stakeholders to gather evidence on the areas of the Bill covered by the LCM. Stakeholder responses are available on the Committee's [website](#).
14. A summary of key points raised by respondents is set out below.
15. Some respondents supported UK and Scottish Ministers being given powers to make regulations that revise pre-application consultation and information provision requirements for electricity consents, plus the establishment of an 'acceptance stage' in the consenting process. Glasgow City Council said the proposals "...will result in greater transparency for applicants and a more efficient delivery of infrastructure. This is likely to be a more costly process for applicants due to greater pre-application demands, but ultimately front loading should save time in the long-run and create better quality applications from the outset."
16. Several respondents welcomed proposals to allow a planning authority objection to an electricity consent application to be considered by hearing, or written submission, in addition to the current Public Local Inquiry. The National Energy System Operator (NESO) stated that: "We particularly support the introduction of a new Reporter-led examination process with flexible methods to consider the concerns of local planning authorities, to address issues raised in the Electricity Network Commissioner's report on lengthy public inquiries that have led to increased consenting processes for projects." Glasgow City Council noted, however, that: "There is no guarantee that timescales for determination would be improved compared to the de facto public inquiry requirement."
17. There was also support for the introduction of fees for electricity consents, if the funds are invested in the energy consents process – which could help speed decision-making. Scottish Environment LINK stated that this "is likely to lead to better resourcing of the determination process and therefore more timeous processing of applications, without being overly onerous for applicants."
18. Respondents including the Environmental Rights Centre Scotland (ERCS) and Scottish Environment LINK, raised concerns about clause 16, which would reduce the time available to lodge a legal challenge to any Ministerial decision on an onshore generating station from three months to six weeks. The ERCS argue: "clause 16 of the Bill will significantly reduce the time limits for starting legal proceedings to challenge onshore electricity consents, and as a result, will have a substantial detrimental impact on access to justice... Civil society organisations and members of the public will struggle to meet a six-week time limit for initiating legal challenges against onshore electricity consents." However, NESO argued that the change "...would align onshore with offshore projects and...reduce the period of uncertainty and construction delay at the tail end of the consenting process."
19. The ERCS also highlighted what they consider to be 'defects' in the UK Government consultation document [Electricity Infrastructure Consenting in Scotland](#), principally that the proposed change introduced by clause 16 is not supported by

evidence, and that data used in the consultation document was irrelevant or flawed – giving the impression that the current three month limit for lodging a legal challenge was causing delays to development when they did not consider this to be the case. The ERCS said consent to clause 16 should therefore be refused.

20. Three submissions stated that they felt recent UK and Scottish consultations on electricity infrastructure were simply box-ticking exercises, and that views expressed by most respondents had simply been noted and then ignored. These submissions indicated that they did not therefore see any worth in providing evidence and did not wish their submissions to be considered as evidence to the Committee. However, the Committee notes these views.

Evidence session with Acting Cabinet Secretary for Net Zero and Energy, 27 May 2025

21. On [27 May 2025](#), the Committee held an evidence session with the then Acting Cabinet Secretary for Net Zero and Energyⁱⁱ and Scottish Government officials. A summary of issues discussed at the meeting is set out below.

Context

22. In her opening remarks, the Acting Cabinet Secretary outlined the purpose and context of the Bill, detailing how it intersects with devolved and reserved matters. She explained that while “land use and planning in Scotland is devolved, the powers to legislate for generation, transmission, distribution and supply of electricity are reserved to the UK Government.”ⁱⁱⁱ Nevertheless, Scottish Ministers retain responsibility for determining applications to construct or install electricity infrastructure under the Electricity Act 1989. The Cabinet Secretary noted that, although the equivalent consenting processes in England and Wales were modernised in 2008, the process in Scotland has remained unchanged due to a lack of legislative competence, with the result that it can take “up to four years to process an application determination.”^{iv}
23. Following calls from the Scottish Government for reform and devolution of powers in order to do this, the previous UK Government committed to reviewing the system in November 2023. The new Labour Government continued this process, culminating in the publication of proposed reforms in October 2024, followed by a consultation. According to the Acting Cabinet Secretary, the consultation received “broad support for the reforms from consultees”^v, and the proposals were subsequently incorporated into the Planning and Infrastructure Bill.
24. With regard to clauses 14 to 20, the Acting Cabinet Secretary described the changes as a long-overdue reform of “outdated and inefficient elements”^{vi} of Scotland's electricity infrastructure consenting process. The reforms include “strengthening pre-application requirements and procedures, making them statutory

ii Since the evidence session, but before the publication of this report, Gillian Martin MSP was appointed permanent Cabinet Secretary for Climate Action and Energy.

iii Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 2

iv Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 3

v Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 3

for the first time and allowing communities to share their views earlier in the process^{vii}; introducing a “new reporter-led procedure”^{viii} in response to objections from local planning authorities, thereby reducing reliance on automatic public inquiries; and moving “from a lengthy judicial review process to one of statutory appeals”^{ix}, aligning with procedures under the Town and Country Planning (Scotland) Act 1997.

Concurrent regulation-making powers in the Bill

25. The Committee discussed the concurrent nature of the regulation-making powers set out in the legislation. Specifically, Members sought clarification on why the Scottish Government was content for powers relating to matters wholly within Scotland—such as electricity infrastructure consenting—to be exercisable by both Scottish Ministers and UK Ministers. The Committee also sought further clarification on how potential conflicts between the Scottish and UK Governments would be managed.
26. The Acting Cabinet Secretary acknowledged the issue but stressed that there is a practical understanding between the two governments, stating “planning is devolved in Scotland, but we have an understanding with the secretary of state”.^x She said that the Bill is, in effect, “righting a wrong,”^{xi} noting that “Wales had the powers long before Scotland will have them”^{xii}, and confirming that Scotland had long sought these reforms. She highlighted that the Bill’s language—empowering “the Secretary of State or the Scottish Ministers”^{xiii}—should be viewed in the context of this mutual understanding that the Scottish Government will be the primary actor when exercising these powers.

Fees for electricity consent applications

27. On the issue of application fees for electricity consents, the Committee sought clarification on whether this would be based on a full cost recovery model and whether the fees would be ring-fenced to support the work of the Energy Consents Unit (ECU)^{xiv}. In response, the Acting Cabinet Secretary confirmed that the Scottish Government’s policy is to achieve “full-cost recovery for public services in general.”^{xv} She stated that fees would be set “to recover the cost of processing applications and providing pre-application services”^{xvi}, and explicitly confirmed that the fees would “help to resource the Scottish Government’s administration of the

vi Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 3

vii Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 3

viii Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 3

ix Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 3

x Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 4

xi Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 4

xii Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 4

xiii Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 4

consenting process.”^{xvii}

28. The Acting Cabinet Secretary noted that the Scottish Government had already acted in anticipation of the increased volume of electricity applications, particularly arising from transmission infrastructure developments and the ScotWind leasing round. She stated that the capacity of the ECU had already been “more than doubled”.^{xviii}

Potential capacity issues in the energy consenting process

29. The Committee acknowledged that while the ECU has seen an increase in capacity, concerns remain about whether the Scottish Environment Protection Agency (SEPA) has sufficient resources to carry out Controlled Activities Regulations assessments and report to local authority planning committees within timeframes that align with developers’ needs.
30. The Committee highlighted that this issue is particularly acute for the pumped hydro storage sector, which faces a critical deadline of 30 September to submit bids under Ofgem’s cap and floor mechanism. To be eligible, developers must secure a section 36 consent by that date—a requirement that may be at risk if SEPA or local authorities are unable to provide timely input for the ECU to process applications efficiently.
31. The Acting Cabinet Secretary said that “I am aware of general concerns about the time that it takes for applications to go through”.^{xix} She highlighted that the Scottish Government has already taken steps to address capacity issues by doubling the size of the ECU and by working with SEPA, which “is currently working on its business plan to deal with the volume of applications that it is getting”.^{xx} She also mentioned joint work with the Minister for Public Finance to provide local authorities with access to external expertise through the rollout of a planning hub model for more complex applications, so that if local authorities do not have the in-house expertise necessary, “they will be able to procure it centrally”.^{xxi}

Environmental impact assessments

32. Clause 20 of the Planning and Infrastructure Bill (Environmental Impact Assessment for Electricity Works), creates a power for the Secretary of State or

xiv In Scotland, certain applications in relation to energy infrastructure are made to the Scottish Ministers for determination. These cases are administered by the Energy Consents Unit.

xv Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 6

xvi Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 6

xvii Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 6

xviii Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 6

xix Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 19

xx Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 19

xxi Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 19

Scottish Ministers to make limited procedural amendments to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. As part of the consenting process for electricity infrastructure in Scotland under sections 36, 36C and 37 of the Electricity Act 1989, Scottish Ministers are required to assess the likely significant environmental effects arising from a proposed Environmental Impact Assessment (EIA) development.^{xxii}

33. The Committee explored the potential interaction between the EIA regime in Scotland and the proposed introduction of environmental outcomes reports (EORs) at the UK level.
34. The Acting Cabinet Secretary confirmed that while the UK Government intends to replace the existing EU-derived EIA framework with a system of EORs—as established in the Levelling Up and Regeneration Act 2023—that system is not yet operational and remains under development. She clarified that powers to make EOR regulations for electricity applications have been transferred to Scottish Ministers via a separate Order, but emphasised that clause 20 of the Planning and Infrastructure Bill offers “a pragmatic interim solution”^{xxiii} by enabling “procedural updates to the existing EIA system, while policy on the potential transition to EORs further develops”.^{xxiv} She said that “there will be no gap”^{xxv} and the transition from one system to another will not result in any lapse in environmental oversight.
35. Scottish Government officials provided further clarification, acknowledging that the overall picture remains complex. Officials said that while the Levelling Up and Regeneration Act 2023 introduced the framework for EORs, the UK Government has yet to define how they will function in practice. In Scotland, officials confirmed, “the policy is to continue with the EU-derived EIA system.”^{xxvi} Officials made clear that clause 20 “does not allow Scottish ministers to make the EIA regulations in full”^{xxvii}, but rather “restores the EIA power in a limited way, allowing us to make procedural updates”.^{xxviii} These updates are intended to improve administrative efficiency—such as enabling online publication of documents—without altering or lowering environmental standards. Officials emphasised that while powers for EORs in relation to the Electricity Act 1989 have been transferred to the Scottish Government, “there are no immediate intentions to bring them in”.^{xxix}

Legal challenge timeframes and community engagement

36. The Committee asked the Acting Cabinet Secretary about the concerns raised by some stakeholders that the proposed reduction in the timeframe for legal

^{xxii} Planning and Infrastructure Bill, Explanatory Notes, House of Commons

^{xxiii} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 7

^{xxiv} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 7

^{xxv} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 7

^{xxvi} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 8

^{xxvii} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 8

^{xxviii} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 8

^{xxix} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 9

challenges—from three months to six weeks—would negatively impact access to justice.

37. In response, the Acting Cabinet Secretary defended the proposed change by highlighting its alignment with existing planning and offshore energy consenting regimes. She noted that “the six-week timeframe has been effective in practice for offshore generating station decisions for more than 10 years—since 2013—and for planning decisions more broadly.”^{xxx} She also said that the measure complies with the Aarhus Convention, stating that “the six-week challenge period has been accepted by the Aarhus compliance committee”^{xxxi}, provided decisions are properly publicised. The Acting Cabinet Secretary framed the change as a means of reducing the prolonged uncertainty for both objectors and developers, stating that “people will not be left in limbo for two years, wondering what the result will be”.^{xxxii}
38. The Acting Cabinet Secretary also pointed to a broader package of reforms in the Bill designed to enhance community input earlier in the planning process. She emphasised that under the new legislation, developers will be legally required to engage with communities before submitting an application. She said that “It is no longer going to be voluntary to engage with communities ahead of putting in an application; it is going to be mandatory”^{xxxiii}, and that this would be a step forward for community empowerment and transparency.
39. The Acting Cabinet Secretary said of the current voluntary system of community engagement that “good practice is patchy”^{xxxiv}, with some developers adhering to voluntary good practice principles and others not engaging meaningfully. She noted, “I agree with community groups that are saying that there has to be enhanced and meaningful community engagement ahead of an application”.^{xxxv} The Acting Cabinet Secretary confirmed that secondary legislation will be developed to formalise and enforce those principles, and non-compliance by developers will be taken into account during the assessment of an application.

40. The Committee welcomes the intention to make engagement with communities mandatory before developers are able to submit applications. However, the Committee acknowledges the concerns that reducing the legal challenge period from three months to six weeks may limit access to justice. It also notes the Acting Cabinet Secretary’s position that this timeframe aligns with existing regimes, will reduce delays in the process, and complies with the Aarhus Convention.

Consideration of clause 42 and associated commencement provisions (clause 96(1)(z1))

^{xxx} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 10

^{xxxi} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 10

^{xxxii} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 10

^{xxxiii} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 10

^{xxxiv} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 13

^{xxxv} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 13

41. The Committee discussed the interaction between clause 42 and clause 96(1)(z1), the latter of which provides for the commencement of provisions in the Bill. Clause 96(1)(z1) provides that only the Secretary of State has the power to fully commence clause 42. The LCM notes that Harbour Order fees are devolved, and the levels at which they are set is a decision solely for the Scottish Ministers. Although the LCM notes that Department of Transport officials have given assurances that commencement would be done by the Secretary of State at a time of the Scottish Ministers' choosing, this is not legally binding. The Scottish Government has queried why it is not considered appropriate to confer the power to commence clause 42(2) on the Scottish Ministers, given that the decision to repeal the relevant provision of the Harbours Act 1964 and the timing of that repeal are matters of devolved policy.
42. The Committee raised concerns about how the repeal of the relevant provisions of the 1964 Act and the introduction of a new fee system would be synchronised. Scottish Government officials explained that while the Bill allows the Scottish Ministers to implement a new fee regime at a time of their choosing, the repeal of the existing provisions remains under the control of the UK Secretary of State. Officials said that, "if we did not have a new fee structure in place and the old system was repealed, there could be a gap, whereby we would not be in a position to charge fees".^{xxxvi}
43. The Acting Cabinet Secretary said the Scottish Government's view was that the safest and most coherent legislative solution would be to place the commencement powers fully in the hands of the Scottish Ministers. Scottish Government officials noted that although the UK Government has indicated it would not act without the Scottish Government's consent, "that is a matter that we are currently negotiating."^{xxxvii}
44. The Delegated Powers and Law Reform (DPLR) Committee also highlighted this issue when it considered the Bill on 6 and 20 May 2025. The DPLR Committee's [report](#) on the LCM noted that if the power in clause 96(1)(z1) was conferred on the Scottish Ministers, that would allow the Scottish Government to control the sequencing of the repeal, so that it aligns with when the Scottish regulations under new paragraph 9A of Schedule 3 of the Harbours Act 1964 Act are ready to come into force. Accordingly, the DPLR Committee asked the UK Government why this power of repeal in clause 96(1)(z1) is conferred solely on the Secretary of State. The [response](#) from the Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government stated, "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".

- 45. The Committee notes the concerns of the Scottish Government and the Delegated Powers and Law Reform Committee that not conferring the power in clause 96 on Scottish Ministers limits the Scottish Government's ability to control the sequencing of the repeal of the relevant provisions of**

^{xxxvi} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 13

^{xxxvii} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 17

the Harbours Act 1964, which may result in a regulatory gap. The Committee welcomes the assurance of the UK Government that timings would be agreed with the Scottish Government but notes that this is not legally binding. The Committee encourages the UK and Scottish Government to use whatever time remains to come to a more concrete agreement on a way forward that both governments are content with.

Future changes to the port fee regime

46. The Committee explored the future role of the Scottish Ministers in relation to setting port fees, particularly in the context of potential regulatory changes following the enactment of new powers. In the event that Scottish Ministers chose to amend how fees are developed or alter the overall fee regime, the Committee asked whether there would be any requirement to seek approval or input from the UK Secretary of State. Scottish Government officials confirmed that, "it will be fully in the hands of the Scottish Ministers."^{xxxviii} Officials outlined that, assuming the process proceeds as expected, the power to make regulations would come into force automatically two months after Royal Assent. Subsequently, the Scottish Ministers would be responsible for introducing new regulations, the existing fee mechanism would be repealed, and the new regime would be implemented. Officials further confirmed that any future amendments to the regime could similarly be made through regulations brought forward in the Scottish Parliament.
47. However, Scottish Government officials confirmed that "at the moment, we have no plans to review the fee structure in Scotland".^{xxxix} Officials explained that while a review could be incorporated into future work plans, any substantive changes would require policy consideration, stakeholder consultation and the drafting and approval of appropriate legislation.

^{xxxviii} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 17

^{xxxix} Net Zero, Energy and Transport Committee, Official Report, 27 May 2025, Col: 18

Conclusion

48. **The Committee recommends by majority^{xi} that the Scottish Parliament give its consent to the UK Parliament legislating in this area in respect of clauses 14 to 21, as proposed in the Scottish Government's draft motion, whilst withholding consent for the time being in relation to clauses 42 and 96 while intergovernmental negotiations are ongoing.**

^{xi} Edward Mountain MSP and Douglas Lumsden MSP dissented from this recommendation.

