



The Scottish Parliament
Pàrlamaid na h-Alba

Published 16 September 2025
SP Paper 860
11th report, 2025 (Session 6)

Net Zero, Energy and Transport Committee

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



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Contents

Introduction	1
Supplementary LCM	3

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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Introduction

1. The UK Government introduced the [Planning and Infrastructure Bill](#) in the House of Commons on 11 March 2025.
2. The Bill covers a number of different subject matters, including 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. It is primarily aimed at accelerating housing development and infrastructure projects across England, with the legislation seeking to deliver 1.5 million new homes and expedite decisions on 150 major infrastructure projects during the current UK Parliament. The Bill is also intended to support the UK Government's "Clean Power 2030" initiative by removing barriers to clean energy projects.
3. On 27 March 2025, the Scottish Government lodged a [Legislative Consent Memorandum \(LCM\) on the Bill](#) and on 13 August lodged a [supplementary LCM](#). These were each referred to the Net Zero, Energy and Transport Committee for consideration.
4. In any report on an LCM, the lead committee's role is to consider whether it is appropriate that consent should be given to the UK Parliament legislating in areas that affect devolved legislative or executive competence. It should also highlight any policy issues that it considers the Parliament should be aware of before reaching a view on consent.
5. The original LCM set out that the consent of the Scottish Parliament was being sought in respect of two elements of the UK Planning and Infrastructure Bill: the provisions on consents for electricity infrastructure (clauses 14–20) and the provisions on fees for harbour orders (clause 42). Consent was also required in relation to clause 96, which deals with commencement and transitional provisions, but only insofar as it relates to clauses 14–20 and clause 42.
6. Clauses 14–20 would make changes to the process for obtaining consent to develop electricity infrastructure under the Electricity Act 1989. The LCM stated that these clauses are the product of joint work between UK and Scottish Government officials to modernise the system for applying to Scottish Ministers for consent to construct and install electricity infrastructure. The reforms cover how applications are developed, publicised, consulted on, considered, and determined, as well as how any decisions may be challenged on points of law. According to the LCM, these are the first such updates since executive devolution of these powers in 1999, and they bring the consent process broadly into line with Scotland's wider planning system, which has been significantly reformed in the intervening period. The Scottish Government supported these clauses, along with clause 96 insofar as it relates to them.
7. Clause 42 would enhance the powers of the Scottish Ministers to charge fees for Harbour Revision Orders, allowing costs associated with applications for port development to be recovered. Although the Scottish Government was content with clause 42, clause 96 provides that only the Secretary of State may bring clause 42 fully into force. While Department for Transport officials had given assurances that

commencement would be done by the Secretary of State at a time chosen by the Scottish Ministers, the LCM highlighted that this arrangement would not be legally binding.

8. The LCM gave 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 did not recommend consent to clause 42, or clause 96 insofar as it relates to section 42.
9. On [27 May 2025](#), the Committee took evidence from the then Acting Cabinet Secretary for Net Zero and Energy on the original LCM. The Committee published its [report](#) on the LCM on 26 June. The Committee’s report concluded (by majority) that the Scottish Parliament give its consent to the UK Parliament legislating in this area in respect of clauses 14 to 20, 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.

Supplementary LCM

10. [The supplementary LCM](#) that was lodged on 13 August relates to clauses 46 and 110 (formerly numbered 42 and 96). They relate to fees for harbour orders, as discussed above. The supplementary LCM was necessitated by amendments to the Bill that address the concerns raised by the Scottish Ministers, as outlined above. The supplementary LCM states that the 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.
11. With these amendments, the Scottish Government is now recommending consent to all of the relevant provisions in the Bill. The draft motion, which will be lodged by the Cabinet Secretary for Transport states:

“That the Parliament agrees that clauses 14 to 20ⁱ, 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.”
12. The Committee discussed the issue of the interaction between clause 42 and clause 96 (which become clauses 46 and 110) when taking evidence on the original LCM. In particular, 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. Officials explained that, although the Bill allows Scottish Ministers to introduce a new fee regime at their discretion, the repeal of the existing system is controlled by the UK Secretary of State. This could result in a gap in which fees could not be charged if the old system were repealed before the new regime was in place.
13. The then 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.
14. The Delegated Powers and Law Reform (DPLR) Committee also highlighted this issue when it considered the original LCM. The DPLR Committee’s report 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 1964 Act are ready to come into force. The DPLR Committee considered the supplementary LCM and reported on 9 September that it is now content with these powers as the UK Government proposes to amend them.

ⁱ The Committee notes that the draft motion reflects updated clause numbering in relation to clauses 46 and 110 but refers to the original clause numbers in respect of clauses 14 to 20, which have been renumbered 18 to 24 in subsequent Bill drafts.

15. In its report on the original LCM this Committee noted the concerns of the Scottish Government and the DPLR 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 the 1964 Act, which may result in a regulatory gap. While the Committee welcomed the assurance that had been provided by the UK Government that timings would be agreed with the Scottish Government it noted that this would not be legally binding. The Committee therefore encouraged the UK and Scottish Government to come to a more concrete agreement on a way forward that both governments are content with.

16. The Committee welcomes the positive intergovernmental working that has resulted in a resolution being reached that is satisfactory to both governments.
17. The Committee recommends that the Scottish Parliament gives its consent to the provision being made in clauses 46 and 110(1)(x) and (xa)(ii) of the Bill, which relate to harbour order fees.
18. As per the Committee's 26 June report on the original LCM for this Bill, the Committee continues to recommend by majorityⁱⁱ that the Scottish Parliament gives its consent to the UK Parliament legislating in respect of clauses 18 to 24 of the Bill (formerly numbered 14 to 20, so referred to as such in the Committee's earlier report), which relate to the consenting regime for larger electricity generating stations and overhead line developments.

ii Edward Mountain MSP and Douglas Lumsden MSP dissented from this recommendation.

