

Net Zero, Energy and Transport Committee
Tuesday 27 May 2025
19th Meeting, 2025 (Session 6)

Legislative Consent Memorandum on the Planning and Infrastructure Bill

Background

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. The Net Zero Energy and Transport Committee has been referred the LCM for consideration, meaning it must report to the Scottish Parliament on it.
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 "Clean Power 2030" initiative by removing barriers for clean energy projects.
3. The LCM notes that the Bill cuts across 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.
4. The [explanatory notes](#) accompanying the Bill set out the UK Government's explanation of what the Bill does.
5. The Bill is currently at Committee Stage in the first house at Westminster.

Consent process for UK Bills affecting devolved matters

6. Chapter 9B of the Scottish Parliament's Standing Orders sets out a formal process to give the Scottish Parliament the opportunity to consent (or not) to UK legislation making provision in relation to devolved matters. An LCM lodged by the Scottish Government must —
 - summarise what the Bill does and its policy objectives;
 - specify the extent to which the Bill makes provision about devolved matters;
 - explain why the Scottish Government considers it appropriate that consent is given or refused.

7. A motion on legislative consent is a motion seeking consent to relevant provisions or seeking refusal of the Scottish Parliament's consent to provisions in the UK Bill affecting devolved matters. A UK Bill considered to trigger a need for an LCM may affect devolved competence in more than one way. A motion may therefore propose consent to some of these elements but non-consent to others. Standing Orders specifies that a motion (whether consenting, refusing consent, or a mixture of both) should normally be lodged. If the Scottish Government does not intend to lodge a motion at the time of lodging the memorandum the LCM should explain why not.

Provisions which require the consent of the Scottish Parliament

8. The LCM says that the consent of the Scottish Parliament is being sought on two elements of the Bill: consents for electricity infrastructure (clauses 14-20) and fees for applications for harbour orders (clause 42). Consent is also required to clause 96, which relates to commencement and transitional provision, insofar as this relates to clauses 14-20 and 42.
9. Clauses 14–20 of the Bill make changes in relation to applications for consent for development of electricity infrastructure under the Electricity Act 1989. These clauses are supported by the Scottish Government (as is clause 96 insofar as it relates to these). The LCM states that these clauses:

“represent the culmination of work between officials of both the UK and Scottish Governments to modernise the process by which applications for consent to the Scottish Ministers to construct and install electricity infrastructure are developed, publicised, consulted upon, considered and determined, as well as how decisions on applications may be challenged on points of law. The proposed updates, which are the first since powers were executively devolved to the Scottish Ministers in 1999, bring these processes broadly into line with the wider planning system in Scotland, which has undergone significant improvement in the intervening period”.
10. Clause 42 provides enhanced powers for the Scottish Ministers in respect of fees for Harbour Revision Orders to allow recovery of costs associated with the handling of applications for port development. The Scottish Government is content with this Clause.
11. However, clause 96 provides that only the Secretary of State 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 section 42. The LCM states that Scottish Government officials will continue to liaise with UK Government officials on this issue.

13. A draft motion, which will be lodged by the Acting Cabinet Secretary for Net Zero and Energy, 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.”

Delegated Powers and Law Reform Committee (DPLRC) Consideration

14. The DPLRC considered the LCM on 6 and 20 May and [reported](#) to Parliament on 21 May. Rule 9B.3.6 of Standing Orders says that where the Bill that is subject to an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the DPLRC shall consider and may report to the lead committee on those provisions.
15. More widely, Rule 6.11.1(b) of Standing Orders allows the DPLRC Committee to consider and report on proposed powers to make subordinate legislation in particular bills “or other proposed legislation” (e.g. in the present case, UK legislation conferring powers on UK Ministers to exercise powers in devolved areas).
16. In respect of clause 96, the report notes that 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.
17. 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, 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.
18. Accordingly, the Committee agreed to ask the UK Government why this power of repeal in clause 96(1)(z1)(ii) is conferred solely on the Secretary of State.
19. 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."

20. The Committee noted in its report 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.

Net Zero, Energy and Transport Committee Consideration

21. The Committee considered its approach to scrutiny of the LCM at its meeting on 22 April. The Committee agreed to write 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](#).
22. At the meeting on 27 May, the Committee will take evidence on the LCM from the Acting Cabinet Secretary for Net Zero and Energy and Scottish Government officials, to discuss the LCM, any developments in respect of the amendments being sought, and any issues raised by stakeholders.
23. Following the evidence session with the Scottish Government on 27 May, the Committee will discuss what further action to take in relation to the LCM, including whether more evidence or information is necessary, taking account of the UK Parliamentary timetable.
24. The Committee is then likely to agree its report on the LCM at a meeting in the near future.

Clerks to the Committee
May 2025