



The Scottish Parliament
Pàrlamaid na h-Alba

Edward Mountain MSP,
Convener, Net Zero,
Energy and Transport
Committee
By email only

Local Government, Housing and Planning Committee
The Scottish Parliament
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Dear Edward,

Levelling-Up and Regeneration Bill: Part 3, Chapter 1 (Planning Data)

As you know, the Local Government, Housing and Planning Committee was designated a secondary committee for consideration of the Legislative Consent Memorandum (LCM) lodged by the Scottish Government on the Bill. Our scrutiny focussed on aspects of the Bill which engage with devolved competence in respect of planning data, namely through the provisions outlined in part 3, Chapter 1 of the Bill which gives the Secretary of State the power to regulate the processing of planning data by planning authorities, to create binding “approved data standards” for that processing. The Scottish Government’s LCM states that the Bill would enable the Secretary of State to create such standards after consulting Scottish Ministers, thereby enabling the UK Government “to legislate within areas of devolved competence following consultation with Scottish Ministers.” We note that there is no requirement on the face of the Bill for either Scottish ministers or the Scottish Parliament to consent to UK ministers legislating in areas of devolved competence.

At our meeting on 25 October 2022, we took evidence on the LCM from a panel of planning professionals¹. We then took evidence from the Minister for Public Finance, Planning and Community Wealth (“the Minister”) on 1 November 2022². Following these sessions we wrote to the Secretary of State for Levelling Up, Housing and Communities inviting him to respond to a number of questions³. We received a response from the Minister of State for Housing and Planning on 28 November.⁴

¹ [Official Report \(parliament.scot\)](#)

² [Official Report \(parliament.scot\)](#)

³ [Letter to SoS \(parliament.scot\)](#)

⁴ [levellingupresponse.pdf \(parliament.scot\)](#)

All of our witnesses referred in evidence to “Transforming Places Together: Scotland’s digital strategy for planning”⁵ which was published in November 2020 and—

“defines a long-term strategic direction for how Scotland’s planning system will digitally transform, embracing the opportunities new digital technologies and data present. It sets out what we intend to deliver, why this is needed and the benefits this transformation will bring.”

The Scottish Government’s digital strategy for planning covers planning applications as well as building standards. We heard of the benefits that a coherent and trusted set of data could bring, particularly for spatial planning. However, our witnesses noted the lack of clarity in the Bill which “does not say what the data standards will be or provide any detail on the process that is to be undertaken to take them forward, other than to say that UK Government ministers will need to consult Scottish ministers.”

Clause 75(2) of the Bill sets out a definition of planning data which would include “any information which is provided to, or processed by,” the planning authority “for the purposes of a function under a relevant planning enactment.” A relevant planning enactment would include any enactment made by the Secretary of State under Part 5 of the Bill which relates to Environmental Outcome Reports.

The Minister of State’s letter states that “the definitions of ‘planning data’ and ‘relevant planning enactment’ are set out under Clause 81 of the Bill” but “we have not specified any data sets within the planning data chapter of the bill.” The letter further states that “the planning data powers will, so far as they may apply to devolved matters, apply only to Environment Outcome Reports (EORs).” The letter then confirms that the UK Government is “having ongoing discussions with the Scottish Government regarding EORs which will inform how the clauses operate across the UK in a way that respects the devolution settlements.”

The Minister expressed frustration in oral evidence at the lack of meaningful engagement between the two governments before the Bill was introduced. Whilst he recognised and supported the need for planning data standards in principle, in his view, “the lack of detail on how the provisions will be implemented leaves unanswered questions.”

The Minister also highlighted the extensive engagement that the Scottish Government had undertaken with stakeholders and contrasted this with the UK Government approach which, for him, was seeking “in effect to undermine and go against the spirit of devolution.” In his view, “the lack of consultation and detail in advance of the bill does not bode well for how UK ministers intend to consult if the Bill becomes an Act.”

⁵ [Transforming Places Together: digital strategy for planning - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/transforming-places-together-digital-strategy-for-planning/pages/11.aspx)

We note the letter of 25 October from the Minister for Levelling Up to the Delegated Powers and Law Reform Committee⁶ which states that discussions were taking place with the devolved administrations to address whether these concurrent digital powers should extend to the devolved administrations. The letter confirms that “the UK Government will bring forward amendments to ensure the Bill reflects what is agreed with the Scottish Government” The Minister’s officials confirmed in evidence that they have ongoing dialogue with UK officials but that “we have not seen any proposals about what the replacement clauses would look like; we have not had sight of any drafts, which is a concern...The process itself remains unknown and the timetable for further meaningful proposals to come forward is also unknown.”

Subsequent to the Minister’s evidence session, the Minister of State’s letter stated that—

“Ministers from the Department for Levelling Up, Housing and Communities will write to Ministers in the Scottish Government shortly, setting out the proposed next steps for agreeing consent across the whole Bill and on amendments. The UK Government is committed to the Sewel Convention, and therefore will not legislate in areas of devolved competence in Scotland without the consent of the Scottish Parliament.”

The Committee welcomes the UK Government’s commitment to agreeing consent on the Bill and on amendments with Scottish Ministers. We also welcome the Minister of State’s reiteration of the UK Government’s commitment to the Sewel Convention and her assurance that it will not legislate in areas of devolved competence without the consent of the Scottish Parliament. However, it is unclear what opportunity there will be for parliamentary scrutiny of any such amendments. We would suggest that your committee may wish to explore options for this with the Scottish Government. For example, does the Scottish Government intend to lodge a supplementary LCM once it has agreed an approach with its UK counterpart?

Given the lack of clarity on certain aspects of the planning data parts of the Bill as set out above and the absence of information on potential amendments, the Committee is unable to make a recommendation at this juncture on whether the Parliament should consent to UK ministers legislating in areas of devolved competence in respect of the Bill’s planning data provisions.

Yours sincerely,

Ariane Burgess, Convener,
Local Government, Housing and Planning Committee

⁶ [levelling-up-bill.pdf \(parliament.scot\)](#)