Legislative Consent Memorandum

Planning and Infrastructure Bill

Background

1. This memorandum has been lodged by Gillian Martin MSP, Acting Cabinet Secretary for Net Zero and Energy, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.

2. The Planning and Infrastructure Bill was introduced by the UK Government in the House of Commons on 11 March 2025. The Bill is available on the UK Parliament website via this link: Planning and Infrastructure Bill - Parliamentary Bills - UK Parliament.

Content of the Bill

3. The Planning and Infrastructure Bill is primarily aimed to accelerate 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.

4. The Bill cuts across a number of different subject matters, namely: 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.

5. The explanatory notes accompanying the Bill set out the UK Government's view of its purpose and main functions. The six parts of the Bill can be summarised as follows:

6. Part 1 of the Bill focuses on infrastructure reforms, addressing NSIPs through revised National Policy Statements and streamlined application processes. It also improves electricity infrastructure by reforming network connections, updating the consents process in Scotland, supporting long-duration storage, and offering benefits to communities near transmission projects. Additionally, it amends transport infrastructure legislation, including the Highways Act 1980 and Transport and Works Act 1992, while introducing provisions for harbour fees and electric vehicle charging points.

- Clauses 1-7 of this Part address NSIPs while clauses 9-23 reform electricity infrastructure processes. Most of these provisions relate to reserved matters of NSIPs (specifically oil and gas pipelines as it applies in Scotland) and electricity, except for clauses 14-20, which modify

Scotland's electricity infrastructure consenting process under the Electricity Act 1989 (1989 Act) and create powers to amend the Electricity Works Act (Environmental Impact Assessments) (Scotland) Regulations 2017. These specific clauses engage the legislative consent process in the Scottish Parliament as they alter devolved executive competencies.

- These Bill provisions will provide the Scottish Ministers regulation-making powers to implement more technical statutory elements of reform. These will be concurrent powers that are exercisable by either Government. The UK Government is of the view that this will provide flexibility by giving both the UK and Scottish Government Ministers the ability to deliver any necessary secondary legislation.
- Clause 40 extends amendments to the Transport and Works Act 1992 (1992 Act) to Scotland. These amendments were originally made to extend to England and Wales only, resulting in parallel texts of the 1992 Act for Scotland and for England and Wales. Clause 40 resolves that issue but as the amendments are relevant only to orders under the 1992 Act for the construction of transport systems in England and Wales they relate to the exercise of functions exercisable otherwise than in or as regards Scotland and are accordingly considered to fall outwith the Scottish Parliament's legislative competence.

7. Part 2 of the Bill reforms the planning system in England and Wales by revising planning decision procedures, including new fee structures for applications, additional training requirements for local planning authorities, and updated delegation protocols for planning decisions. It also establishes frameworks for strategic planning and introduces spatial development strategies to coordinate regional growth.

- Clause 42 of this Part enhances cost recovery powers for both the Marine Management Organisation (in England and Milford Haven) and Scottish Ministers regarding port development applications. This measure applies to Scotland and, together with clause 96(1)(z1) which relates to commencement of these amendments, engages the legislative consent process, as it aims to improve capacity and capabilities for handling such applications.

8. Part 3 of the Bill establishes a strategic approach to nature recovery related to development by implementing Environmental Delivery Plans and creating the Nature Restoration Fund. This section also expands Natural England's powers and duties to facilitate environmental protection and enhancement alongside development activities.

9. Part 4 of the Bill focuses on Development Corporations by redefining their geographical scope and organisational mandate. It introduces duties which require these bodies to consider sustainable development and climate change in their operations, while granting them expanded powers over infrastructure projects and transportation functions.

10. Part 5 of the Bill streamlines the compulsory purchase process by delegating more decisions to inspectors and enabling authorities to take earlier possession of acquired land. It modernises procedures through electronic service of notices, simplifies newspaper notice requirements, and revises the Land Compensation Act 1973 along with the loss payments system for affected property owners.

11. Part 6 of the Bill contains the remainder of miscellaneous and general provisions, including requirements for reporting on environmental outcomes. It also provides an overview of the Bill's territorial extent across the UK nations and outlines commencement timelines with transitional arrangements for implementing the new legislation.

- Clause 93 of this Part modifies the territorial extent of "environmental protection" to give it full extra-territorial effect, enabling UK compliance with international environmental assessment and transboundary consultation commitments. Since this provision only changes the extent of an existing power that the Scottish Ministers can exercise in certain circumstances, it does not alter executive competence and therefore does not engage the legislative consent process.

Provisions which require the consent of the Scottish Parliament

12. The Scottish Government considers that legislative consent is required for the following provisions of the Bill, as they make provision for a devolved purpose and alter the executive competence of the Scottish Ministers. The UK Government agrees with the Scottish Government's view as regards the relevant clauses. The UK Government considers that legislative consent is required for the following clauses:

- Part 1, Clauses 14 – 20 (and schedule 1), which make changes, applying only in Scotland, with respect to applications for consent for development of electricity infrastructure under the 1989 Act.
- Clause 42, which provides enhanced powers for Scottish Ministers to recover costs associated with the handling of applications for port development.
- Clause 96, which makes commencement and transitional provision in relation to the above clauses.

13. The Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders. Clauses 14 to 20 of the Bill and clause 96(1)(g), (h), (i), (j), (k), (l), and (m) alter the executive functions of the Scottish Ministers. It also contains provision which is both for a purpose within the legislative competence of the Scottish Parliament and which alters the executive competence of the Scottish Ministers, as regards clauses 42 and 96(1)(z1) of the Bill. The legislative consent process is therefore engaged. The provisions of the Bill which require the legislative consent of the Scottish Parliament are set out in detail below.

Reasons for seeking legislative consent and refusing legislative consent

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

14. Electricity is a reserved matter in the Scotland Act 1998 (Head D1 of schedule 5) and the Electricity Act 1989 is UK primary legislation. The Scottish Ministers have executive competence for processing and determining applications for consent under section 36 of the 1989 Act (consent for construction, operation and extension of generating stations in Scotland and relevant waters) and section 37 of, and schedule 4 to that Act (installation and keeping installed of certain electric lines above ground in Scotland). Schedule 8 of the 1989 Act sets out procedures for processing, considering and determining applications.

15. Clauses 14–20 of the Bill 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.

16. Clauses 14(2) and (5), 15, 17, and 20 give the Scottish Ministers and the Secretary of State powers to make secondary legislation to give effect to the policy and this is explained more fully under sub-headings below. Such secondary legislation would be subject to further procedure and if made by the Scottish Ministers would be laid in the Scottish Parliament following further policy development. Regulations made under these clauses would be subject to negative procedure in the Scottish Parliament. Clause 14(4) also gives regulation making powers to the Scottish Ministers as set out in the sub-headings below and these regulations are subject to the affirmative procedure. Clauses which relate to transitional provisions are discussed in reference to clause 96.

Clause 14 – Consents for generating stations and overhead lines: applications

17. Clause 14 amends schedule 8 (‘consents of the Secretary of State and the Scottish Ministers under sections 36 and 37’) to the 1989 Act, and only as it applies in Scotland. It provides for the Secretary of State, or the Scottish Ministers, to make regulations about certain matters in relation to applications for consent under sections 36 and 37. The clause is lengthy and is therefore considered in subsections as outlined in the following paragraphs.

Clause 14(2) – Pre application procedure, application information requirements, and acceptance of applications by Scottish Ministers

18. Subsection 14(2) inserts new paragraph 1A after paragraph 1 of schedule 8, and provides that the Scottish Ministers or the Secretary of State may make regulations about various matters. These include the steps an applicant for consent must take before an application is made, the information that must be included in an application, and about an acceptance stage, during which the Scottish Ministers must assess an applicant's compliance with any requirements imposed by the regulations in order to decide whether or not to accept the application. Regulations may also make provision about the need for Scottish Ministers to request further information in relation to any acceptance stage. The subsection also sets out that regulations may be made about the fees to be paid to the Scottish Ministers on application, or for anything done by them in relation to a proposed application.

19. These are concurrent powers exercisable by either the Secretary of State or the Scottish Ministers, reflecting the devolution position under which electricity is a reserved area, but the Scottish Ministers have devolved competence to administer and determine applications for consents under section 36 and 37 of the 1989 Act. The regulatory powers to be created would allow modern and well established Scottish planning processes to be reflected in the administration of Electricity Act applications in Scotland, where at present there is no statutory requirement for notification, publicity or consultation on proposals before an application is made, no detailed requirements that applicants must adhere to in the making of applications to the determining authority, and no validation procedure.

20. Clause 14(2) addresses these deficits and will improve public participation in the development of proposals and promote the submission of improved applications. The Scottish Government considers pre-application engagement with people potentially impacted by development to be essential. It considers that public bodies should be engaged with early in the development of proposals. It also requires that applications have sufficient information when submitted, to allow proper public scrutiny of proposals, and to reduce delays to decision-making.

21. The Scottish Government therefore recommends that consent is given to clause 14(2) of the Bill.

Clause 14 (3) – Objections – Examination of applications

22. Clause 14(3) amends paragraph 2 of schedule 8 to the 1989 Act, such that in the case of an application for consent which is made to the Scottish Ministers, and where a planning authority objects to an application and that objection is not withdrawn, the Scottish Ministers must appoint a reporter to examine the application. Before determining whether to give consent, the Scottish Ministers must consider the objection and the reporter’s report. The provision replaces the requirement that exists at present where in the same circumstances, in all cases where the planning authority object, a public inquiry must be held. A proportionate approach, tailored to

individual development proposals and the circumstances relating to objections, is more appropriate. This would align with established planning appeals processes in Scotland, and reduce the time taken to determine applications.

23. The Scottish Government therefore recommends that consent is given to clause 14(3) of the Bill.

Clause 14(4) – Examination procedures

24. Clause 14(4) inserts a new paragraph 2A into schedule 8 of the 1989 Act setting out further the procedures that would apply following the Scottish Ministers' appointment of a reporter under the provisions inserted by clause 14(3). A reporter must make proposals as to which procedures are appropriate in order to examine the application, which may consist of one or more of the following:

- Consideration of objections and other representations which have already been lodged;
- Consideration of new written representations from persons specified by the reporter;
- Holding of one or more hearing sessions;
- Carrying out an inspection of the land to which the application relates;
- Holding a public inquiry.

25. Where written submissions, hearings or inquiry sessions are proposed, the reporter requires to set out a statement of issues in scope of the proceedings and give reasons for their adoption. The reporter must then publish the proposals and notify all interested parties of the proposals and invite written representations. If the reporter considers it appropriate a hearing may be held to consider the scope of proceedings in light of any representations made. A decision on final procedure to be adopted must be published alongside an explanation of the reasons and a timetable for the procedure to be adopted, including submission of the report to Scottish Ministers.

26. The procedure inserted into schedule 8 of the 1989 Act by subclause (4) may be amended by the making of regulations by the Secretary of State or Scottish Ministers. Where regulations are made by the Scottish Ministers, they are subject to the affirmative procedure in the Scottish Parliament. Where a statutory instrument is proposed to be made by the Secretary of State, it must be approved by a resolution of each House of Parliament.

27. The procedures in subclause (4) seek to ensure a broad range of examination processes is available to an independent reporter which can be tailored to the specific circumstances of each case. They retain the option of a full public inquiry but also provide that a more proportionate approach can be adopted where it is appropriate. The reporter's reasons for the procedure to be adopted will be open to consideration by all interested parties and the reporter will require to provide final reasons for the procedure and scope of the examination before it begins. This will

ensure the interests of parties are given full consideration while providing the means for the reporter to adopt a proportionate approach which is appropriate to the application.

28. The Scottish Government recommends that consent is given to clause 14(4) of the Bill.

Clause 14(5) – Time limits

29. Clause 14(5) inserts paragraph 7B into schedule 8 of the 1989 Act and makes provision for the Secretary of State, or the Scottish Ministers, by regulations to set time limits for actions that may or must be taken in relation to an application for consent. Such time limits may apply to applicants, consultees, a reporter, or the Scottish Ministers, and regulations may make provision for the consequences of failing to comply. The intent is to ensure that parties to the pre-application and application process respond timeously to consultations, that applicants respond promptly to the need for information, and that reporters and the Scottish Ministers adhere to timelines, resulting in greater time savings overall between submission and determination of applications.

30. The Scottish Government recommends that consent is given to clause 14(5) of the Bill.

Clause 15 – Variation of consents

Applications for variation of section 37 consents

31. At present there is no statutory process for the variation of consents given for overhead electric lines under section 37 of the 1989 Act.

32. Clause 15(1) inserts a new section 37A after section 37 of the 1989 Act. It provides that a person having the benefit of a section 37 consent to install and keep installed an electric line above ground may, by application, request that the Scottish Ministers vary the consent. The provisions mirror section 36C of the 1989 Act which makes provision for the Scottish Ministers to vary section 36 consents for construction, operation and extension of generating stations. Subsection (2) of the new section 37A sets out that the Secretary of State or the Scottish Ministers may make regulations about applications to vary under section 37A, reflecting the position under section 36C – the application process for which is set out in a Scottish statutory instrument.

33. The Scottish Government considers that there should be an equivalent process in relation to the variation of consents under section 37, as exists for consents under section 36. Such procedure would allow variations to consent already given for electricity infrastructure projects to be carried out where these are no longer constructable as consented, and where otherwise, a completely new consent would otherwise be required, adding to the time and cost associated with delivery of the project.

Variations of consent without an application

34. Clause 15 inserts new section 37B into the 1989 Act which provides that the Scottish Ministers, with the agreement of a consent holder, may vary a consent due to a change of circumstances relating to the environment or due to a technological change. The clause provides that the Secretary of State or the Scottish Ministers may make regulations setting out the procedures, including consultation and notification procedures, that could apply. It is envisaged that such variations could be made where there are significant changes in scientific knowledge or methods of assessment that relate to a consented development, or significant technological changes where there may be significant adverse or beneficial effects on the environment. This would provide Scottish Ministers or consent holders with the ability to address such issues which may arise without the requirement for submission of a variation application.

Correction of errors

35. Clause 15 inserts section 37C into the 1989 Act which provides that the Scottish Ministers may amend correctable errors in decision documents. The definition of correctable errors is confined to administrative errors and not the reasons for the decision. The Scottish Ministers may exercise this power of their own accord or following a written request from the consent holder, and regulations may make provision about the process for such corrections including notification requirements and rights to make representations. The intention is to have a process in particular to address condition numbering or cross reference errors; as minor errors in legal documents can have significant consequences for developments.

36. The Scottish Government therefore recommends that consent is given for clause 15.

Clause 16 – Proceedings for questioning certain decisions on consents

37. Section 36D of the 1989 Act provides that any person aggrieved by a decision under section 36 of that Act (in relation to an application for consent to construct, extend or operate a generating station), and wishes to question the validity of the decision on the grounds that the decision is not within the powers of the Scottish Ministers, or that one or more of the relevant requirements have not been complied with in relation to the decision, they may make an application within six weeks to the Inner House of the Court of Session for the decision to be suspended or quashed.

38. Clause 16 extends that provision such that these proceedings apply to decisions of the Scottish Ministers under sections 36 and 36C, section 37, and under the new variation procedures proposed to be created by clause 15 (new sections 37A, 37B, and 37C). A consequential amendment is also made to the Town and Country Planning (Scotland) Act 1997 in respect of the making by Scottish Ministers of a direction that planning permission is deemed to be granted.

39. Currently, decisions regarding onshore applications are challengeable only by judicial review within a three month period from the date of decision. Clause 16 would bring procedures for challenging decisions made regarding onshore projects into line with procedures already in place for challenging section 36 decisions made regarding offshore generating stations. It would align with the process for challenging the Scottish Ministers' decisions on planning applications under the Town and Country Planning (Scotland) Act 1997, whereby the application must be made within six weeks and to the Inner House of the Court of Session.

40. Clause 16 would also bring the timescale for challenging large electricity infrastructure decisions in court into alignment across Great Britain. The proposed six week timescale is compliant with the Aarhus committee's recommendation on timescales for challenging decisions on legal grounds and the measure would ensure challenges are brought in a timely manner.

41. The Scottish Government therefore recommends that consent is given for Clause 16.

Clause 17 – Applications for Necessary Wayleaves – Fees

42. The functions under paragraph 6 of schedule 4 to the 1989 Act were first transferred to the Scottish Ministers in 1999. The paragraph provides that where it is necessary or expedient for a licence holder under the Act to install or keep installed an electric line on, over or under any land, and where the landowner declines to provide any wayleave as required by the licence holder, the licence holder may apply to the Scottish Ministers for a 'necessary wayleave'. This means a consent that may be given following consideration of the application to the licence holder by the Scottish Ministers to install and/or keep installed the electric line and to have access to the line in order to maintain it. At present, unlike for such applications in England and Wales, the Scottish Ministers have no powers to charge fees to recover the costs of administering these applications.

43. Clause 17 inserts a new paragraph 6A after paragraph 6 of schedule 4 to the 1989 Act, which provides that the Scottish Ministers may make regulations setting fees which must be paid on applications for necessary wayleaves. The costs to the public of administering these applications have been absorbed for some time, and the extant policy is to recover the full costs of providing public services.

44. The Scottish Government therefore recommends that consent is given for clause 17.

Clause 18 – Regulations

45. Clause 18 amends section 106 of the 1989 Act, in consequence of the new provisions above for the Scottish Ministers to make regulations under the 1989 Act. Regulations made by the Scottish Ministers under the new regulation making powers inserted by clauses 14 to 17 are subject to the negative procedure, save for regulations made under paragraph 2A of schedule 8 (as inserted by clause 14(4))

which are subject to the affirmative procedure. As discussed earlier, the regulation making powers to be created are concurrent powers exercisable by both the Secretary of State and the Scottish Ministers. Subclause (5) requires that whether it is the Secretary of State or Scottish Ministers who propose to make regulations under the new sections 37A, 37B or 37C, or the new paragraphs 1A, 2A and 7B of schedule 8 of the 1989 Act, one must consult the other before any such regulations are made. This requirement to consult reflects the Scottish Government's expectations.

46. The Scottish Government therefore recommends that consent is given for clause 18.

Clause 19 (and schedule 1) – minor and consequential amendments

47. Clause 19 and schedule 1 of the Bill make amendments that are consequential on the amendments made by the preceding clauses relating to applications for consent for electricity infrastructure in Scotland, and other minor textual amendments to update references – for example, where many relevant sections of the Act currently read 'the Secretary of State', this is replaced by 'appropriate authority' where necessary to reflect the role as being carried out by the Scottish Ministers.

48. The consequential amendments include provisions whereby the Scottish Ministers may disregard SEPA's advice where this is not provided within time limits. This provision will only have effect if time limits, which may or may not be imposed by the Scottish Ministers in secondary legislation, have effect for these purposes. Otherwise, the minor and consequential amendments are of little note, and amend the existing text in the 1989 Act to reflect the changes brought forward in the preceding clauses.

49. Therefore, the Scottish Government recommends that consent is given for clause 19 and schedule 1.

Clause 20 – Environmental Impact Assessments for electricity works

50. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ('2017 regulations') require that where consent under section 36 or 37 of the 1989 Act is required for 'EIA development', then an environmental impact assessment (EIA) must be carried out before any consent may be granted. Such an assessment is integral to the consideration of applications for the largest electricity infrastructure proposals in Scotland. It is the means by which the Scottish Ministers may be able to reach a conclusion on the likely significant impacts on the environment of a development for which consent in required.

51. Prior to the United Kingdom's exit from the European Union, the Scottish Ministers had executively devolved regulation making powers under section 2(2) of the European Communities Act 1972 to make or amend these regulations. This power was lost as a result of Brexit, leaving the 2017 regulations in operation for applications under the 1989 Act in Scotland, but without any power for the Scottish Ministers to amend them.

52. Clause 20 provides concurrent powers to make limited procedural amendments to the 2017 regulations. The power to make regulations amending the 2017 regulations will enable the 2017 regulations to be aligned with the new provisions introduced by clauses 14 to 18 of the Bill and with any regulations which are made by virtue of these clauses. In alignment with the proposals in the Bill the powers would enable regulations to provide for:

- the charging of fees for EIA screening and scoping opinions
- the requirement for a screening opinion to have been given before the submission of an application without an EIA report
- copies of EIA reports for Scottish Ministers and for inspection in public places
- the publication of environmental information
- time limits for representations and for the provision of information

53. Regulations may also make transitional, consequential or supplementary provision. The Scottish Ministers or the Secretary of State must consult the other before the making of regulations.

54. Clause 20 does not restore the pre-EU exit position in relation to EIA for electricity works. It is the UK's policy intention to move away from the EU-derived EIA system, which has operated for many decades across planning systems in the UK, and to adopt a system of 'Environmental Outcomes'. Provision for Environmental Outcome Reports (EOR) to replace EIA was made in the Levelling Up and Regeneration Act 2023. Functions providing that the Scottish Ministers may make EOR regulations in respect of Electricity Act applications were transferred (to be exercised concurrently with the Secretary of State) by the laying of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2025.

55. The UK Government are yet to set out how the EOR framework might operate, and further detail is expected to be set out in due course. The Scottish Government will consider this detail before taking a position on the adoption of EOR for Scotland. In the meantime, it is the policy of the Scottish Government to retain the environmental protections afforded by the EIA framework. Clause 20 will allow alignment with updated 1989 Act procedures and ensure its continued effective operation for electricity works. This provision was a welcome addition following initial reluctance from UK Government to provide Scottish Ministers with any powers over the EIA regime.

56. Therefore, the Scottish Government recommends that consent is given for clause 20.

Clause 96 – commencement and transitional provision

57. Clause 96 provides that clauses 14(5) and (6), 15, 17, 18 and 20 will come into force on the day of Royal Assent. Clauses 14(1), (2), (4) and clause 15 will come into force on the same day insofar as they confer a power to make regulations.

58. Clauses 14(3), and (4) (for remaining purposes), 15 (for remaining purposes), 16 and 19 will come into effect two months after the day Royal Assent is given. This will provide suitable lead-in time for new examination procedures for applications to be introduced, for new variation processes to come into effect for existing consents, and for new statutory appeal procedures to come into effect.

59. The Scottish Government recommends that consent is given for clause 96, as it applies to clauses 14 to 20 of the Bill.

Part 1, Chapter 3 – Transport Infrastructure

Clause 42 – Fees for applications for harbour orders

60. Clause 42 makes the following amendments to the Harbours Act 1964: Clause 42(2) amends paragraph 7(1) of schedule 3 (things to accompany applications for Harbour Revision Orders (HRO)) to remove paragraph 7(1)(c) “such fee as the Secretary of State may determine.” Clause 42(3) removes paragraph 9(a) “pays any fee which is due under paragraph 7(1)(c),” from paragraph 9 of schedule 3. Paragraph 9 relates to the Scottish Ministers’ duty not to consider an application for an HRO unless certain requirements are met.

61. The effect of the clause is to remove the power of the Scottish Ministers to make a determination setting the fees for an HRO, and instead create a regulation making power for the Scottish Ministers to by regulations state the method by which the fee for an HRO application is to be determined, and gives Ministers the power not to proceed with an application if the fee is not paid (the enabling power is provided for the regulations to state that the Ministers are required not to proceed if the fee is not paid).

Clause 96 – commencement of amendments to the Harbours Act 1964

62. Clause 96(1)(z1) means the amendments to the Harbours Act 1964 in clause 42(1) and (3)-(7) come into force automatically 2 months after the Bill completes its passage in the UK Parliament. However, clause 42(2), which removes the ability to make a determination setting the fees for an HRO, will come into force on a day to be appointed in regulations made by the Secretary of State.

63. The Bill aims to give each jurisdiction the new regulation making power in new paragraph 9A of schedule 3 to the Harbours Act 1964, but also to let the existing determination making power to set the fee for an application for a harbour revision order to continue in the meantime, until specifically removed by regulations bringing clause 42(2) into force. It is the Secretary of State who will be making those regulations to remove that determination making power.

64. Harbour Order fees are devolved, and the levels at which they are set is a decision solely for the Scottish Ministers. The process for amending the powers to introduce more flexibility, the Scottish Government is content with (as in clause 42). The issue arises when any subsequent changes commence (clause 96(1)(z1)). This is reliant on Secretary of State making the regulations for Scotland. UK Department for Transport officials have emailed noting that the Secretary of State will do so at a time of the Scottish Ministers' choosing, but this is not a legally binding position.

65. The Scottish Government has queried why it is not considered appropriate to confer the power to commence clause 96 in relation to clause 42(2) on the Scottish Ministers for Scotland, given that not only the decision to repeal the relevant provision of the Harbours Act 1964, but also the timing of that repeal are matters of devolved policy. Otherwise, this 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.

66. Recent precedent for powers to commence devolved provision in UK Bills to be conferred on the Scottish Ministers rather than on the Secretary of State include the Renters (Reform) Bill, and the Tobacco and Vapes Bill.

67. Scottish Government officials will continue to liaise with UK Government officials on the option to include a devolved provision to be conferred on the Scottish Ministers.

Consultation

68. There has been detailed consultation with reference to clauses 14-20 that focus on reforms to Scottish consenting under the 1989 Act.

69. The UK Government appointed Nick Winser in July 2022 to act as an independent advisor. He engaged with stakeholders across the electricity transmission network deployment process between July 2022 and July 2023 to understand how to accelerate the deployment of electricity transmission infrastructure.

70. His resulting, independent recommendations included:

- The removal of the automatic requirement for a public local inquiry when a planning authority objects to a development, with an alternative process introduced that would allow the Scottish Ministers to hear more about a specific issue raised by statutory consultees.

- Further improvements made to the planning process to reduce the time taken to obtain planning consent to twelve months via changes to the Electricity Act 1989 or new supporting processes. Changes suggested included, but were not limited to:
    - Introduction of pre-application requirements.
    - New application forms.
    - Clear roles, responsibilities and mandatory timeframes introduced for all parties involved including statutory consultees.
    - Introduction of a process for variations which matches the process electricity generators use.

71. In November 2023, the UK Government agreed to a review of Scottish consenting in their Transmission Acceleration Action Plan, in line with these recommendations.

72. In October and November 2024, the UK Government held a public consultation on proposed reforms to Scotland's electricity infrastructure approval processes. These proposals were developed after nine months of extensive collaboration between UK and Scottish Government officials, who worked together to identify potential reform areas and design the consultation framework.

73. The consultation received a large number of responses from a diverse group of stakeholders, including members of the public, community councils, local authorities, statutory consultees, energy companies (generation, storage, transmission, and distribution), and various industry and professional organisations.

74. After analysing this feedback and discussing further with Scottish Government officials, the UK Government decided to implement the reform package largely as it was originally proposed in the consultation document. The clauses, as drafted, align with our expectations following on from these discussions.

Financial implications

75. The Bill proposals will enable Scottish Ministers to charge fees for necessary wayleave applications and for pre-application services, as is currently done in England and Wales.

76. Use of fees collected under the 1989 Act should only extend to covering costs of providing the service of processing and determining Electricity Act applications. Charges for applications will be set in accordance with the Scottish Public Finance Manual and based on projected application intake.

77. The regulation making powers provided by the Bill will likely result in secondary legislation being laid in the Scottish Parliament. The Bill proposes new fee income and potentially additional costs being incurred by Scottish Government, local government and statutory consultees, through altered resourcing requirements.

78. These impacts would be considered in detail through the development of any secondary legislation that is explored, where officials must carefully consider the costs that would be borne by any changes. Notably, a Business and Regulatory Impact Assessment (BRIA) is a requirement for secondary legislation. This would quantify direct and indirect costs, analyse benefits against costs, and identify who would bear the costs.

Post EU scrutiny

79. Clause 20 is relevant to the Scottish Government's policy to maintain alignment with the EU. The Electricity Works 2017 regulations are derived from directive 2014/52/EU - assessment of the effects of certain public and private projects on the environment. The 2017 regulations therefore have the status of assimilated law (the new name for retained EU law). As stated in paragraph 54, the ability for Scottish Ministers to maintain alignment with EU legislation in relation to environmental effects as regards electricity works was lost when the UK exited the EU. The clause restores the ability for Scottish Ministers to make limited procedural changes and alignments with any future secondary legislation, but it does not provide that more substantive changes may be made, such as to the environmental factors to be assessed or the information that must be included in an EIA report. This would limit the ability of the Scottish Ministers to align with such matters should these be updated by the EU in a new EIA directive.

80. However, the UK Government have transferred to the Scottish Ministers the functions of Part 3, Chapter 1 and Part 6 of the Levelling Up and Regeneration Act 2023 (2023 Act) in relation to the assessment of the effects on the environment in connection with applications for consent, approval or variation of consent for electricity generating stations (under sections 36 and 36C of the 1989 Act) and associated overhead line infrastructure (under section 37 of the 1989 Act). These functions in theory provide that the Scottish Ministers, within an untested EOR framework, could make provision for a new standard and system of environmental assessment in Scotland. Implementation of a new framework could not be done solely for electricity works; it would require further policy development on how such a system could work, a national planning policy decision to depart from EU alignment, and alignments of process across many different development consent regimes across Scotland.

81. The UK Government's policy is to replace EIA with the EOR system in the 2023 Act, and therefore there is no appetite for the UK Government to make available wider powers over the 2017 regulations than is provided for in clause 20, or to restore to the Scottish Ministers the pre-EU exit position in relation to EIA. In view of the UK position, the Scottish Government are of the view that while restoration of the pre exit position would be preferred, clause 20 is supported, as it allows for modifications, efficiencies and alignments in process, that will have benefits in the more efficient processing of Electricity Act applications.

Conclusion

82. 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.

83. Clauses 42 and 96 (as it applies to clause 42) both have a devolved purpose and alter the exective competence of the Scottish Ministers. The Scottish Government also considers that the other clauses do not alter the Scottish Ministers' functions/executive competence.

84. As a result, the Scottish Government considers that the Scottish Parliament should:

- provide legislative consent for the clauses 14-20, and clause 96 as it relates to those clauses, and:
- refuse consent for clause 42, and clause 96(1)(z1), until clarification about the effect of clause 96 in relation to clause 42 is provided.

Draft motion on legislative consent

85. The draft motion, which will be lodged by the Acting Cabinet Secretary for Net Zero and Energy, is:

> "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."

Scottish Government
March 2025

This Legislative Consent Memorandum relates to the Planning and Infrastructure Bill (UK legislation) and was lodged with the Scottish Parliament on 27 March 2025

Planning and Infrastructure Bill – Legislative Consent Memorandum

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