

Local Government, Housing and Planning Committee

25th Meeting, 2022 (Session 6)

Tuesday 25 October 2022

Levelling Up and Regeneration Bill (UK Legislation) – Legislative Consent Memorandum

Introduction

1. The purpose of this paper is to provide background information to assist the Committee's consideration of the planning data parts of the (UK) Levelling-Up and Regeneration Bill's Legislative Consent Memorandum (LCM).
2. The Bill was introduced in the House of Commons by the then Secretary of State for Levelling Up, Housing and Communities on 11 May 2022. It, along with its accompanying documents, can be accessed via the following link: [Levelling-up and Regeneration Bill publications - Parliamentary Bills - UK Parliament](#).
3. A House of Commons Library Briefing on the Bill is also available online: [CBP-9558.pdf \(parliament.uk\)](#)
4. The Cabinet Secretary for Finance and the Economy, lodged the Scottish Government's LCM on the Bill on 27 July 2022: [splcms0623.pdf \(parliament.scot\)](#)
5. At this meeting, the Committee will take evidence on the LCM from the following stakeholders—
 - Liz Hamilton, Head of Planning, Homes for Scotland;
 - Craig McLaren, Director of Scotland, Ireland and English Regions, Royal Town Planning Institute;
 - Jim Miller, Chair, Heads of Planning Scotland (HOPS).
6. The Committee is then expected to take evidence on the LCM from the Minister for Public Finance, Planning and Community Wealth at its next meeting on 1 November.
7. The Bill had its second reading in the House of Commons on 8 June but timescales for the rest of its passage through Westminster are currently unclear. It is possible that the new UK Government may seek to amend the Bill although it has yet to confirm what changes it may wish to make, if any.

Legislative Consent

8. The UK Parliament and the Scottish Parliament can both make laws that apply in Scotland. The Scottish Parliament legislates on issues that are devolved to Scotland whilst the UK Parliament can legislate on reserved matters which apply to the whole of the UK.

9. Sometimes the UK Parliament will make laws for Scotland on—

- devolved matters;
- what the Scottish Parliament can make laws about (“legislative competence”);
- the powers of Scottish Ministers (“executive competence”)

10. Under the terms of the Scotland Act 2016, the UK Parliament will not normally legislate on devolved matters without the consent of the Scottish Parliament under what is known as “the Sewel Convention”. There is a formal process for the Scottish Parliament to consider such UK legislation via an LCM.

11. When the UK Parliament considers a Bill that affects Scotland, the Scottish Government prepares an LCM. Under Standing Orders, an LCM is required to—

- (a) summarise what the Bill does and its policy objectives;
- (b) specify the extent to which the Bill makes provision—
 - (i) for any purpose within the legislative competence of the Scottish Parliament; or
 - (ii) to alter that legislative competence or the executive competence of the Scottish Ministers.

12. Usually, the relevant committee(s) will consider the LCM before the lead committee reports to Parliament setting out its recommendation on whether it should consent to the UK Parliament legislating in areas within the Scottish Parliament’s legislative competence.

13. Once the Parliament is ready to debate the LCM, the Scottish Government prepares a legislative consent motion inviting the Parliament to confirm or withhold its consent. MSPs will then vote on the motion. This vote is required to take place before the Bill goes through its final amending stage in the UK Parliament (in this case in the House of Lords).

14. However, The UK Supreme Court ruled in 2017 that the Scottish Parliament does not have a “legally enforceable veto”. This means that even if the Scottish Parliament votes against a legislative consent motion, the legislation can still become law.

The LCM

15. The Scottish Government’s LCM states that—

“The Bill forms part of the wider UK Government programme to ‘level up the country’ as set out in the February 2022 Levelling Up White Paper¹. Part 1 of the Bill introduces statutory provision for the UK Government’s “Levelling-up Missions” which cover many areas that are within the devolved responsibility of the Scottish Government and Scottish Parliament including justice, health, and education. The Bill also includes provisions for planning reform (for England) outlined in the earlier Planning for the Future White Paper² (August 2020).”

Part 1 - Levelling-Up Missions

16. In respect of Part 1 of the Bill, the LCM states that—

“The UK Government has identified 12 policy areas for improvement by 2030, a number of which are within devolved competence: economic development, transport, skills, employment, health, housing and justice. The UK Levelling Up white paper set targets for these areas for 2030, including some UK-wide targets.”

17. In the Scottish Government’s view, Part 1 “triggers the need for a LCM as it contains provision applying to Scotland for purpose(s) that are within the legislative competence of the Parliament.”

18. However, the UK Government considers that Part 1 of the Bill does not require legislative consent, “since these duties apply to inequalities across the UK as a whole this does not relate to the legislative competence of the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru” (Explanatory Notes, paragraph 1539)³.

19. The Scottish Government disputes this position on the basis that—

“in substance these provisions will, and are intended to, provide a legislative framework to underpin a role for UK Ministers in devolved areas. Statements on the levelling-up missions would include matters within the devolved competence of the Scottish Parliament.”

Part 3, Chapter 1 – Planning Data

20. The LCM states that—

“Chapter 1 of Part 3 relates to Planning Data provisions, linked to the functioning of Environmental Outcome Reports. This Chapter 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. It also provides planning authorities with the power to

¹ [Levelling Up the United Kingdom - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/levelling-up-the-united-kingdom)

² [Planning for the future - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/planning-for-the-future)

³ [Levelling-Up and Regeneration Explanatory Notes \(parliament.uk\)](https://www.parliament.uk/explanatory-notes/levelling-up-and-regeneration) (para. 1539)

require planning data to be provided to them in accordance with the relevant approved data standards.”

Part 5 – Environmental Outcomes Reports

21. The LCM states that—

“Part 5 of the Bill seeks to improve outcomes for the natural environment. Clause 116 of the Bill introduces powers for the Secretary of State to specify outcomes relating to environmental protection in the United Kingdom or a relevant offshore area. Linked to this is a power to require Environmental Outcomes Reports (EORs) to be prepared in relation to a proposed relevant consent or a proposed relevant plan, introducing a new approach to environmental assessment in planning and other consenting systems and moving away from the current and EU-derived procedural approach in place across the UK.”

22. The LCM states that these clauses would allow the Secretary of State to make “planning data regulations” and “EOR Regulations in relation to environmental outcome reports” after consulting Scottish Ministers, therefore enabling the UK Government “to legislate within areas of devolved competence following consultation with Scottish Ministers.”

23. The LCM concludes by stating that the Scottish Government cannot recommend that the Parliament consent to the Bill as introduced for the following reasons—

- The Bill contains provisions that would give UK Government Ministers a role in setting targets for devolved matters and reporting on these to the Westminster Parliament;
- The Bill contains provisions which would effectively give UK Ministers powers to override existing and established environmental protections in Scotland;
- The Bill as introduced gives UK Government Ministers powers to act in devolved areas without needing the consent of the Scottish Government or Parliament.

24. In the Scottish Government’s view, “this is fundamentally at odds with the devolution settlement, which places responsibility for devolved matters with the Scottish Government, accountable, through the Scottish Parliament, to people in Scotland.”

Clause 186 - Royal Institution of Chartered Surveyors

25. The LCM explains that “Clause 186 enables the carrying out of a review of the Royal Institution of Chartered Surveyors (RICS)” although it notes that a recent external review of RICS led by Lord Bichard made recommendations which “effectively replicate the provisions in relation to Clause 186.” RICS has confirmed that it will accept all of Lord Bichard’s recommendations with immediate effect so the Scottish Government is content that “Scottish interests

will be protected by the five-yearly review” and suggests that “the issue of the Bichard Report may also lead to the dropping of Clause 186 from the Bill in any event as no longer being necessary.”

Committee scrutiny

26. The Net Zero, Energy and Transport Committee has been designated lead committee for this LCM and took evidence on the Environmental Outcome Reports parts of it on 4 October 2022. Subsequent to that meeting, it has written to the Secretary of State for Levelling-Up, Housing and Communities. A copy of that letter is attached as an Annex to this paper.

27. The LGHP Committee will report to the lead committee as a secondary committee on Part 3, Chapter 1 of the Bill which relates to planning data. Whilst the lead committee has yet to confirm a date on which it will take evidence from a Scottish Government minister, the LGHP Committee will aim to report its findings to it by mid-November.

28. The Finance and Public Administration Committee wrote to the Secretary of State for Levelling-Up, Housing and Communities on 5 October inviting him to give evidence on the UK Government’s approach to the UK Shared Prosperity Fund and the progress made with the Levelling-Up Fund. The letter can be accessed via the following link: [FPAC Letter to SoS, 5 Oct 2022.pdf](#).

29. The Delegated Powers and Law Reform Committee considered the LCM at its meeting on 27 September after which it wrote to the Secretary of State for Levelling-Up, Housing and Communities with a number of questions relating to three clauses of the Bill which confer delegated powers on UK Ministers within devolved areas. The letter can be accessed via the following link: [DPLR Letter to SoS, 28 September 2022](#).

30. The DPLR Committee requested a response from the Secretary of State by 17 October 2022.

Conclusion

31. The Committee is invited to consider the above information in its evidence session with stakeholders.

32. The Committee will be invited to agree its response to the lead committee, in private, at a future meeting after it has taken evidence on the LCM from the Minister for Public Finance, Planning and Community Wealth.

**Committee Clerks
October 2022**

Annex

Rt Hon Simon Clarke
MP
Secretary of State for
Levelling Up, Housing
and Communities
UK Government

Net Zero, Energy and Transport Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Email: netzero.committee@parliament.scot

Via email only

11 October 2022

Dear Simon,

UK Levelling-up and Regeneration Bill

I am writing on behalf of the Net Zero, Energy and Transport Committee of the Scottish Parliament in relation to the UK Government's Levelling-up and Regeneration Bill.

The Committee has been designated as lead committee for consideration of the [Legislative Consent Memorandum \(LCM\)](#) lodged by the Scottish Government on the Bill. Our scrutiny will focus primarily on aspects of the Bill which engage with devolved competence in areas of environmental law, namely through the provisions outlined in part 5 of the Bill which seeks to establish a new regime of 'Environmental Outcome Reports' (EORs) across the UK.

At our meeting on 4 October 2022, the Committee took evidence on the LCM from a panel of stakeholders. Following this we are seeking further clarity on a number of points in relation to the Bill—

1. The Committee has heard from stakeholders about a potential problem with clause 121 of the Bill (requirements to consult devolved administrations) with regards to the Sewel Convention which sets out that the UK Parliament will “not normally” legislate on a matter within the devolved competence of the Scottish Parliament without legislative consent. Is the UK Government considering amendments to this clause to require consent when the Secretary of State makes EOR regulations which contain provisions within the devolved competence of the Scottish Ministers?

2. How will the UK Government seek to meaningfully engage the devolved administrations when developing further proposals on EOR regulations?
3. How does the UK Government envisage the outcomes regime operating within the landscape of the devolved settlement?
4. Does the Bill as drafted affect responsibility for planning decisions on cross-border projects? For example, decision-making on compensation and mitigation for offshore wind or developments on river catchments that straddle England and Scotland.

Please note the Committee hopes to report our findings on the LCM to the Scottish Parliament by the end of November. As such, it would be helpful if a response to the points raised above could be provided by 4 November.

Thank you and I look forward to hearing from you.

Yours sincerely,

Edward Mountain MSP
Convener, Net Zero, Energy and Transport Committee

This letter is copied to the Rt Hon Alister Jack MP, Secretary of State for Scotland and Ariane Burgess MSP, Convener of the Local Government, Housing and Planning Committee.