

Local Government, Housing and Planning Committee

26th Meeting, 2022 (Session 6)

Tuesday 1 November 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. At this meeting, the Committee will take evidence on the LCM from Tom Arthur, Minister for Public Finance, Planning and Community Wealth.

Background

3. The Bill was introduced in the House of Commons by the 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](#).
4. A House of Commons Library Briefing on the Bill is also available online: [CBP-9558.pdf \(parliament.uk\)](#)
5. The Cabinet Secretary for Finance and the Economy, lodged the Scottish Government's LCM on the Bill on 27 July 2022: [splcms0623.pdf \(parliament.scot\)](#)
6. The Committee took evidence on the LCM at its previous meeting 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).
7. The official report of that evidence session is available via the following link: [Local Government, Housing and Planning Committee 25th Meeting, 2022 | Scottish Parliament Website](#)

8. 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.

Legislative Consent

9. 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.

10. 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”)

11. 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.

12. 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.

13. 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.

14. 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).

15. 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

16. 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 3, Chapter 1 – Planning Data

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

Part 5 – Environmental Outcomes Reports

18. 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.”

19. 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.”

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

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

20. 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.

21. 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.”

Committee scrutiny

22. 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. It then [wrote to the Secretary of State for Levelling-Up, Housing and Communities](#).

23. 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.

24. 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](#).

25. The DPLR Committee received a [response from the Minister for Levelling-Up](#) on 25 October.

26. The Minister’s response states that—

“Clause 75 (power in relation to the processing of planning data) enable the UK Government to set national data standards to facilitate the creation of data that is consistently held and processed. This clause is concerned with the form of information requirements (content) which are created through other planning acts. The flow of reliable and consistent data is expected to stimulate the development and adoption of new

software and services for the planning sector and to foster a more efficient and effective planning system. Digital tools and services should help to better engage citizens with the planning process by facilitating their understanding of planning and development proposals in their local area. Adopting these measures in the way they are drafted will ensure the benefits pass to UK environmental assessments.

Clause 75 is primarily concerned with governing the processing of planning data by English planning authorities (by virtue of the definition of “relevant planning authority” and “relevant planning enactment”). However, the inclusion of Part 5 of the Bill (Environmental Outcome Reports) into those definitions means we have taken a limited power to legislate in that area of devolved competence following consultation with the devolved administrations. This power was included at introduction to complement the provisions for environmental assessments as outlined above.

The discussions with the devolved administrations described above are intended to address whether these concurrent digital powers should extend to the devolved administrations. Conversations are already underway, and I would like to thank officials in the Scottish Government for their constructive engagement with those from my own department. Once these discussions have concluded, the UK Government will bring forward amendments to ensure the Bill reflects what is agreed with the Scottish Government.”

27. The Finance and Public Administration Committee also 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](#).

Conclusion

28. The Committee is invited to consider the above information in its evidence session with the Minister for Public Finance, Planning and Community Wealth.

29. The Committee will be invited to consider its response to the lead committee at a future meeting.

**Committee Clerks,
October 2022**