



The Scottish Parliament
Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Supplementary Legislative Consent Memorandum: delegated powers relevant to Scotland in the UK Infrastructure Bank Bill



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Committee Membership



Convener
Stuart McMillan
Scottish National Party



Deputy Convener
Bill Kidd
Scottish National Party



Paul Sweeney
Scottish Labour



Jeremy Balfour
Scottish Conservative
and Unionist Party



Oliver Mundell
Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 10 January 2023, the Committee considered the delegated powers that are relevant to Scotland in the UK Infrastructure Bank Bill (UK Parliament legislation).
2. The [UK Infrastructure Bank Bill](#) ("the Bill") was introduced in the House of Lords on 11 May 2022 and is currently at report stage in the House of Commons.
3. The UK Infrastructure Bank ("the Bank") was established to support private infrastructure projects to help meet the UK Government's objectives on economic growth, levelling up, and transitioning to net zero. The Bill represents the final stage in the set-up of the Bank, which has been operating on a non-statutory basis since it was established in June 2021.
4. At its meeting on 25 October 2022, the Committee considered the delegated powers relevant to Scotland in the Bill. The Committee published its [report](#) on 27 October 2022.
5. The lead committee is the Economy and Fair Work Committee.

Supplementary Legislative Consent Memorandum

6. The Scottish Government lodged a [Legislative Consent Memorandum](#) ("LCM") on 2 September 2022, in which it explained that whilst it was broadly supportive of the Bill, it would not recommend that consent be granted until further assurances were provided by HM Treasury.
7. The Bill has since been amended and further assurances provided. The Scottish Government has lodged a [Supplementary LCM](#) in which it now recommends that the Scottish Parliament gives legislative consent to the Bill.

Committee consideration

8. The Committee noted that one of the amendments to the Bill is to the delegated power in clause 2, which the Committee considered at its meeting on 25 October 2022. The amendment requires the UK Treasury to consult with the Scottish Ministers before exercising the power, but it does not require the Scottish Ministers' consent. This means that the SI protocol does not apply and there is currently no process by which the Scottish Parliament can hold Scottish Ministers to account for their position in any consultation with the Treasury.
9. The majority of the Committee noted that the amendment to clause 2 does not change any of the Committee's conclusions at paragraphs 21-23 of its [report on the LCM](#). The majority of the Committee therefore considered that its view remains as stated in that report.ⁱ

10. The Committee notes that clause 2 has been amended so as to require UK Treasury to consult with the Scottish Ministers before exercising the power, however it does not require the Scottish Ministers' consent.

11. The majority of the Committee reports that its views on the delegated power in clause 2, remains as stated in paragraphs 21 – 23 of its 53rd Report of 2022 on the delegated powers relevant to Scotland in the UK Infrastructure Bank Bill.ⁱⁱ

ⁱ For the purposes of this report, the majority is Bill Kidd MSP, Jenni Minto MSP and Paul Sweeney MSP. Oliver Mundell MSP and Jeremy Balfour MSP did not agree with this position.

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