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## **Economy and Fair Work Committee**

# **Report on the Supplementary Legislative Consent Memorandum for the UK Infrastructure Bank Bill**



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# Economy and Fair Work Committee

To consider and report on matters relating to the economy falling within the responsibility of the Cabinet Secretary for Finance and the Economy.



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# Committee Membership



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# Introduction

1. The [UK Infrastructure Bank Bill](#) is a UK Government Bill introduced in the House of Lords on 11 May 2022. The Scottish Government lodged an initial [Legislative Consent Memorandum](#) (LCM) on 2 September. On [21 September](#), under Rule 9B.3.5, the Parliamentary Bureau referred the LCM to the Economy and Fair Work Committee.
2. The Committee took evidence from Ivan McKee, Minister for Business, Trade, Tourism and Enterprise on [5 October 2022](#). The Committee's report on the LCM was published on [2 November 2022](#). The Minister provided further evidence in a letter dated [14 November 2022](#).
3. The Sewel Convention is the convention that the UK Parliament will not normally legislate on matters devolved to the Scottish Parliament without its consent. [Chapter 9B of the Parliament's Standing Orders](#) sets out the rules and procedures for seeking legislative consent under the convention.
4. A [supplementary LCM](#) was lodged on 14 December 2022, following amendments agreed to the Bill at the House of Commons and assurances provided in relation to a number of related matters by the UK Government.
5. The Bill is currently at the report stage in the House of Commons. At the time of writing, a date for this stage has yet to be announced.

## UK Infrastructure Bill

6. The purpose of the Bill is to place the UK Infrastructure Bank (UKIB) on a statutory footing and to:
  - place UKIB objectives into legislation;
  - create statutory forms of transparency, accountability and governance;
  - remove legal obstacles to UKIB's capacity for lending to local authorities and the Northern Ireland Executive for infrastructure purposes;
  - grant specific powers to the Treasury to provide financial assistance to UKIB; and
  - ensure UKIB is a long-lasting institution.
7. The UK Infrastructure Bank Bill is relatively short, comprising eleven clauses. HM Treasury believes that six of these require legislative consent as they could fall within the legislative competence of the Scottish Parliament. These are:
  - Clause 2 (Objectives and functions);
  - Clause 3 (Strategic priorities and plans);
  - Clause 4 (Directions);

- Clause 5 (Financial assistance);
  - Clause 8 (Duties of the bank); and
  - Clause 11 (Extent, commencement and short life).
8. These clauses relate to infrastructure investment and may involve investment in areas such as rail, ports or bridges located solely within Scotland and therefore fall within devolved competence.

## Initial LCM

9. The Scottish Government stated in its initial LCM:

” Despite the merits of the Bill, the Scottish Ministers cannot recommend legislative consent at this time. Our final position on whether to recommend consent will be subject to the outcome of ongoing discussions with the UK Government and the provision of assurances that Scotland’s interests will be properly reflected in the design and delivery of UKIB activity. Should such assurances be received, we will provide a supplementary Legislative Consent Memorandum. <sup>1</sup>

10. In its report on the initial LCM, the Committee notes that the following were still under discussion:
- the development of a Memorandum of Understanding (MoU) between UKIB and the Scottish National Investment Bank (SNIB);
  - the placement of individuals with an understanding of Scottish Government policy at board room level or that such individuals are included on relevant investment panels; and
  - the impact on Barnett consequentials.
11. The Committee noted the initial LCM, the comments from the Delegated Powers and Law Reform Committee (DPLRC) and asked to be kept updated on discussions.

## Supplementary LCM and amendments to the Bill

12. Following the House of Commons Committee Stage on [22 November 2022](#), a number of amendments were agreed to which address some of the outstanding issues highlighted by the Scottish Government.

### Clause 2: Objectives and activities

13. An amendment was agreed to which places a requirement on the Treasury to consult with devolved nations in exercise of powers in areas of devolved competence. The Treasury is required to consult Scottish Ministers before making regulations under clause 2(7) that would contain provision within the legislative

competence of the Scottish Parliament.

### Clause 3: Strategic priorities and plans

14. An amendment to Clause 3 was agreed to requiring the Treasury to consult Scottish Ministers before including in a statement of strategic priorities for the UKIB any provision that concerns a subject matter within the legislative competence of the Scottish Parliament.

### Clause 7: Directors: appointments and tenure and Clause 10: Interpretation

15. An amendment to Clause 7 was agreed to requiring the UKIB's board to include one or more directors with responsibility for representing the interests of Scottish Ministers.
16. Clause 10 now requires the Bank's board to include one or more directors with responsibility for representing the interests of the appropriate national authorities.
17. A full list of the amendments at the House of Commons Committee Stage can be found [here](#).
18. The Scottish Government sought assurances that an MOU would be developed, with the understanding that this should maintain high level alignment with Scottish Government priorities through SNIB's missions. The Treasury have agreed to support an MOU or similar administrative mechanism, alongside the agreed amendments. Both SNIB and UKIB have been asked to work together to consider its terms.
19. The Scottish Government also sought assurances that there would be no impact on Barnett consequentials should the Scottish Parliament provide consent. The Treasury has provided assurances that there will be no impact on Barnett consequentials as a result of the Bill.
20. In the supplementary LCM, the Scottish Government notes:

” HM Treasury has now provided the requested assurances namely that Scotland's interests will be reflected in the design and delivery of the UKIB's activity, alignment between the UKIB and the SNIB via a Memorandum of Understanding and that there will be no impact on Barnett consequentials raised by the Bill. In doing so they have agreed amendments to the Bill that place a requirement on Treasury to consult with devolved nations in exercise of powers in areas of devolved competence.

The Scottish Government is now able to support legislative consent for the UK Infrastructure Bank Bill. <sup>2</sup>

21. The draft motion, which will be lodged by the Deputy First Minister and Cabinet Secretary for Covid Recovery, is:

” That the Parliament agrees that the relevant provisions of the UK Infrastructure Bank Bill, introduced in the House of Lords on 11 May 2021 and subsequently amended, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive function of the Scottish Ministers, should be considered by the UK Parliament. <sup>2</sup>



# Scrutiny by the Delegated Powers and Legislative Reform Committee

22. The DPLRC considered the initial LCM at its meeting on [25 October 2022](#) and published its report on [27 October 2022](#).
23. The DPLRC considered the Supplementary LCM at its meeting on [10 January 2023](#) and published its report on [11 January 2023](#) and stated the following:

” 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.

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.<sup>i 3</sup>

24. Clause 2 of the Bill sets out the Bank’s objectives and activities, as well as the definition of infrastructure which is central to the scope of those activities. This clause also creates delegated powers to enable the Treasury to change the Bank’s activities or the definition of infrastructure using secondary legislation under the affirmative procedure.
25. Paragraphs 21-23 of the DPRLC’s report on the initial LCM are as follows:

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<sup>i</sup> 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

” The Committee notes that there is no statutory requirement for HM Treasury to obtain the Scottish Ministers’ consent when exercising these powers within devolved competence, therefore, there is no formal means by which the Scottish Parliament could scrutinise the regulations made by HM Treasury or be notified that they had been laid before the UK Parliament.

The Committee reiterates the views previously expressed in its reports on the LCMs for the Police, Crime, Sentencing and Courts Bill, the Health and Care Bill, the Elections Bill and the Public Services Pensions and Judicial Offices Bill, namely:

- the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence;
- accordingly, powers conferred on UK Ministers should be subject to a requirement for the Scottish Ministers’ consent when exercised within devolved competence.

The Committee also notes that the process set out in the SI Protocol 2 will not apply to the exercise of this power by HM Treasury because it does not relate to an area formerly within EU competence.<sup>3</sup>

26. In its report on the initial LCM, this Committee said:

” The Committee notes the views of the Delegated Powers and Law Reform Committee (DPLRC) expressed in its report on the LCM that—

- the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence;
- accordingly, powers conferred on UK Ministers should be subject to a requirement for the Scottish Ministers’ consent, when exercised within devolved competence.

In its previous report on the Legislative Consent Memorandum - Professional Qualifications Bill, the Committee shared the concerns of the Delegated Powers and Legislative Reform Committee that where UK legislation provides for regulations to be made in devolved areas, the legislation should require the UK Government to obtain consent. We note that the Delegated Powers and Legislative Reform Committee has written to the Scottish Government on this and that it awaits a response.<sup>3</sup>

# Conclusion

27. **The Committee welcomes the resolution of a number of outstanding issues, relating to the Bill, through amendments to the Bill and assurances given by the UK Government.**
28. **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. The Committee also notes that a majority of the Delegated Powers and Legislative Reform Committee reported that its views remained 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, namely that:**
  - **the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence;**
  - **accordingly, powers conferred on UK Ministers should be subject to a requirement for the Scottish Ministers' consent when exercised within devolved competence.**
29. **This Committee has previously shared the concerns of the Delegated Powers and Legislative Reform Committee that where UK legislation provides for regulations to be made in devolved areas, the legislation should require the UK Government to obtain consent.**

- [1] Scottish Government. (2022, September 2). Memorandum from the Scottish Government. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/lcms/uk-infrastructure-bank-bill/uk-infrastructure-bank-bill-legislative-consent-memorandum.pdf>
- [2] Scottish Government. (2022, December 14). Supplementary Memorandum from the Scottish Government. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/lcms/uk-infrastructure-bank-bill/supplementary-legislative-consent-memorandum.pdf>
- [3] Scottish Parliament. (2023, January 11). Supplementary Legislative Consent Memorandum: Delegated Powers Relevant to Scotland in the UK Infrastructure Bank Bill. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/1/11/3ac21f5c-52ef-4d1a-bf10-7dbf2d9d2a28#Introduction>



