



The Scottish Parliament  
Pàrlamaid na h-Alba

6 February 2017  
SP Paper 85  
2nd Report (Session 5)

**Rural Economy and Connectivity Committee**

**Comataidh Eaconomaidh Dùthchail is Co-cheangailteachd**

# **Legislative Consent Memorandum on the UK Digital Economy Bill (LCM(S5)8)**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Rural Economy and Connectivity Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Economy and Connectivity.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/rural-committee.aspx>



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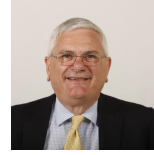
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# Executive summary

This report details the Rural Economy and Connectivity Committee's consideration of the Legislative Consent Memorandum on the Digital Economy Bill and its agreement to—

- note the contents of the Memorandum and the motion of support from the Scottish Government;
- note the concerns expressed by the Delegated Powers and Law Reform Committee as well as the House of Lords Delegated Powers and Regulatory Reform Committee;
- record its concern at the limited time allowed for scrutiny of the Memorandum by the Scottish Parliament.

## Background

1. [The Digital Economy Bill](#) ("the Bill") was introduced in the House of Commons on 5 July 2016, and in the House of Lords on 29 November 2016.
2. The Bill consists of 7 parts:
  - Part 1 introduces a broadband universal service obligation, entitling consumers to a minimum speed; provides Ofcom with powers to set general conditions that require communication providers to adhere to specified processes in order to facilitate customers changing communications providers on request; and gives Ofcom powers to require communications providers to pay compensation to consumers in certain circumstances.
  - Part 2 repeals the existing Electronic Communications Code and inserts a new code; it also provides Ofcom with powers to regulate "dynamic spectrum access".
  - Part 3 introduces age verification for online pornography with penalties for non-compliance. It enables the regulator to notify payment service providers and ancillary services of those in breach of the provisions, and provides the regulator with the power to direct internet service providers to block access by persons in the UK to prohibited material.
  - Part 4 updates intellectual property rules for digital industries.
  - Part 5 makes provision for data sharing between public bodies for some purposes, and in some circumstances. Datasets may be shared to support public service delivery and in relation to public sector debt and fraud, and to produce research and official statistics. There are also specific provisions for sharing data related to civil registration.
  - Part 6 introduces a new statutory code for direct marketing; makes Ofcom responsible for the regulation of all BBC activities; and transfers to the BBC from the Secretary of State the ability to make concessions on TV licences relating to age.
  - Part 7 makes provision for the commencement of the Bill's provisions. It also sets out the territorial extent and application in the UK of each of the measures.
3. Nearly all aspects of the Bill extend to Scotland. However, the majority deals with matters that are reserved to the UK Parliament and make no alteration to the executive competence of the Scottish Ministers. The areas of the Bill where the consent of the Scottish Parliament is required relate to:
  - the Scottish Ministers laying down fees for the Lands Tribunal for Scotland ("the Tribunal") to charge for hearing any disputes under the Code and laying down rules for the Tribunal to follow in any such cases; and
  - the Digital government provisions on data sharing between public authorities and statistical data from larger undertakings.

4. The first provision enables Scottish Ministers to make any rules and lay down fees for cases heard in the Lands Tribunal for Scotland relating to disputes associated with installation and maintenance of communications networks under the Electronic Communications Code. This is the aspect of the LCM that falls directly within the Rural Economy and Connectivity Committee's remit.
5. The second provision relates to data sharing across public bodies (both within Scotland and cross-border) for the purposes of (a) public service delivery (b) addressing debt owed to the public sector (c) addressing fraud against the public sector (d) research (e) statistics. Considering the breadth of the data sharing provision it would likely be of interest to a variety of subject Committees across the Parliament.



## Scrutiny of the LCM

6. The Cabinet Secretary for the Rural Economy and Connectivity, Fergus Ewing MSP, lodged [LCM\(S5\)8](#) on 19 January 2017. The draft motion, which will be lodged by the Cabinet Secretary for the Rural Economy and Connectivity is:
  - ” That the Parliament agrees that the relevant provisions of the Digital Economy Bill, introduced in the House of Commons on 5 July 2016, relating to the Scottish Ministers laying down fees and rules for the Lands Tribunal for Scotland in cases concerning the Electronic Communications Code and Part 5 (Digital government), so far as these matters fall within the legislative competence of the Scottish Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.
7. The memorandum was referred to the Rural Economy and Connectivity Committee as lead committee by the Bureau on 24 January 2017. The LCM was also considered by the Delegated Powers and Law Reform Committee.

### Delegated Powers and Law Reform Committee

8. On 31 January 2017 the Delegated Powers and Law Reform (DPLR) Committee considered the LCM and chose to bring a number of points to the Committee’s attention. A link to the DPLR Committee’s report is included in Annex A.
9. In relation to the powers provided in regard to the Electronic Communications Code - Lands Tribunal for Scotland the DPLR Committee was broadly content. It stated:
  - ” ...the power to make rules conferred on the Scottish Ministers in schedule 1, so far as inserting paragraph 106 of schedule 3A of the Communications Act 2003, is acceptable in principle.

The Committee accepts that the rules would be laid before the Parliament, but not subject to further procedure.
10. However, in relation to the provisions on data sharing contained in part 5 of the Bill the DPLR Committee shared some concerns about the clauses, which are outlined below.

11. Clauses 30(2) and (6) and 38(2)(a) and (c) and 38(3) – Powers to make regulations to specify persons who may disclose information in relation to public service delivery, and objectives for which information may be disclosed it stated:

” The Committee recommends the following to the Rural Economy and Connectivity Committee:

The Committee notes initially that, in its 13th Report of Session 2016-17, the House of Lords Delegated Powers and Regulatory Reform Committee has made these recommendations in relation to the powers in clause 30 of the Bill:

*‘The authorities or descriptions of authorities who are to be “specified persons” should be listed on the face of the Bill; and Ministers should not have power to add any public authority, or description of authority, but only those authorities engaged in the provision of the types of public service specified in the Bill.’*

*‘Only in these circumstances would we regard as appropriate a Henry VIII power allowing Ministers to amend the list in the Bill, recommended above, by affirmative procedure regulations. It also follows that Ministers should not have power to specify very generalised objectives under clause 30(6) ... They should instead be required to specify closely delineated objectives which can be properly scrutinised by Parliament.’*

*‘We are also deeply concerned about the power to prescribe as a “specified person” a person “providing services to a public authority” (see clause 30(3)(b))... We recommend that clause 30(3)(b) should be removed from the Bill, unless the Government can explain to the satisfaction of the House why it is needed and what safeguards are in place to prevent its misuse.’ (Paragraphs 24 to 27 of Report).*

12. The Committee notes the recommendations of the Delegated Powers and Regulatory Reform Committee, in their application to the powers conferred on the Scottish Ministers in clauses 30(2) and (6), 38(2)(a) and (c), and 38(3).

13. Clauses 31(4), 38(2)(b) and (c) and 38(3)– Powers to make regulations to amend the list of permitted recipients of information from specified persons for use in connection with fuel poverty support schemes; and to amend the second condition that must be met for the disclosure of information to gas and electricity suppliers for fuel poverty purposes.

” The Committee makes the following recommendation to the Rural Economy and Connectivity Committee:

The Committee notes initially that, in its 13th Report of Session 2016-17, the House of Lords Delegated Powers and Regulatory Reform Committee has made these recommendations in relation to the powers in clause 31 of the Bill:

*“As regards the power to add new persons or descriptions of persons in subsection (1), the memorandum explains that it is needed so as to enable “the list to be kept up-to-date with the persons that are required to deliver fuel poverty support or to administer, monitor and enforce the scheme”. We recommend that the power, which is drafted in a very broad terms, should be amended so as to reflect the narrow policy intention set out in the memorandum.”*

*“The power to amend subsection (3) is also an open-ended one. It is justified in the memorandum on the basis that it would “enable the fuel poverty schemes to be updated should the statutory framework for the existing schemes change, or new frameworks for support schemes be created”. We consider that this power too should be amended in order to reflect that narrow policy intention” (paragraphs 32 and 33 of Report).*

14. The Committee notes the recommendations of the Delegated Powers and Regulatory Reform Committee, in their application to the powers conferred on the Scottish Ministers in clauses 31(4), 38(2)(b) and (c) and 38(3).

## Rural Economy and Connectivity Committee

15. At its meeting on 1 February 2017, the lead Committee considered the contents of the LCM.
16. During discussion, the Committee noted the extremely tight time frame provided for consideration by the Scottish Parliament. The majority of members echoed the concerns raised by the DPLR Committee, but one member felt that the consideration of future statutory instruments offered sufficient opportunity to comment or intervene on the implementation of these additional powers. Some members felt reassured that the concerns raised by the DPLR Committee were similar to those highlighted by the House of Lords and therefore felt that these issues would be addressed in Westminster where the Bill is progressing.
17. Some members felt that given the limited opportunity for other committees to scrutinise the memorandum, time should be scheduled for the LCM to be debated in the Chamber.

## Conclusions

18. The Committee is content with the provision regarding the Electronic Communications Code. However, the Committee notes with concern the extremely tight timeframe given to the Scottish Parliament for the consideration of those elements of the UK Digital Economy Bill that are the subject of the Memorandum. Although it acknowledges that the time frame was set by the parliamentary process of the House of Lords, it feels that it has constrained, not only the Rural Economy and Connectivity Committee's ability to scrutinise, but also that of other subject Committees who may have an interest in the data sharing provisions. The limited time available for scrutiny meant that the Committee has been unable to examine the policy implications of the concerns raised by the DPLR Committee, which had only been agreed by that Committee 24 hours previously.
19. With this in mind the Committee has therefore agreed to note the Memorandum rather than offer a recommendation to Parliament on whether to approve or disapprove the Memorandum.

The Committee notes the contents of the Memorandum and the motion of support from the Scottish Government. It also notes the concerns expressed by the Delegated Powers and Law Reform Committee as well as the House of Lords Delegated Powers and Regulatory Reform Committee. The Committee restates its concern at the limited time allowed for scrutiny of the Memorandum by the Scottish Parliament.

# Annex A

Delegated Powers and Law Reform Committee Report

[5th Report, 2017 \(Session 5\): Report on the Legislative Consent Memorandum on the Digital Economy Bill](#)

