



Delegated Powers and Law Reform Committee

Dean Lockhart MSP
Convener of the Net Zero, Energy and
Transport Committee
By email

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Dear Dean

At the meeting of the Delegated Powers and Law Reform Committee on 29 March, the Committee considered the delegated powers relevant to Scotland in the [High Speed Rail \(Crewe Manchester\) Bill](#) as referred to in the [Legislative Consent Memorandum](#) (“the LCM”) lodged by the Scottish Government on 7 February 2022.

At that meeting, the Committee agreed to highlight to you letters it has written to both the UK Government and the Scottish Government with questions it had on various powers in the LCM. Copies of both letters are included as **Annexes A** and **B**.

Finally, I understand the Net Zero, Energy and Transport Committee is taking evidence from the Cabinet Secretary on 10 May. Although not related to the proposed delegated powers, the Committee noted that the Bill might lead to some investment in Scotland and queried what level of investment that might lead to. It agreed to highlight this to you ahead of your consideration of the Bill.

I hope this correspondence is helpful.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee

Annex A

Letter from the Convener of the Delegated Powers and Law Reform Committee to the Rt Hon Grant Shapps MP, Secretary of State for Transport

At the meeting of the Scottish Parliament's Delegated Powers and Law Reform Committee on 29 March, the Committee considered the delegated powers relevant to Scotland in the [High Speed Rail \(Crewe Manchester\) Bill](#) as referred to in the [Legislative Consent Memorandum](#) ("the LCM") lodged by the Scottish Government with the Scottish Parliament on 7 February 2022.

The Committee noted that the following powers to make regulations and rules by statutory instrument are exercised by the Secretary of State in consultation with the Scottish Ministers —

- schedule 5 Paragraph 15 (as modified by Schedule 33) – Designation of trunk or special roads;
- clause 18 (deemed planning permission) and Schedule 17 Paragraph 17 and 24(6) (as modified by Schedule 33) - Power to make provision about fees relating to requests for approval and appeals in connection with the payment of fees by means of a cheque;
- clause 18 (deemed planning permission) and Schedule 17 Paragraph 24 to 27 (as modified by Schedule 33) – Powers relating to modification of the appeals procedure;
- clause 58 - Power to make rules about the provision of arbitration of the Bill; and
- clause 22(1) and 22(2) and Schedules 18 and 19 (as modified by Schedule 33) - Power to disapply provisions related to listed buildings and ancient monuments.

These powers are exercisable in relation to matters within the legislative competence of the Scottish Parliament.

The Committee would therefore be grateful if you could explain the UK Government's reasons why it is considered appropriate that they are exercised in consultation with Scottish Ministers, but without a statutory requirement to obtain the Scottish Ministers' consent. As part of your response, the Committee would welcome specific details on what 'in consultation with Scottish Ministers' will mean in practice.

The Committee also noted the following powers to make regulations are exercised by the Secretary of State, but that there is no requirement to consult Scottish Ministers—

- Clause 18 (deemed planning permission) and Schedule 17 Paragraph 13 (as modified by Schedule 33) – Power to specify qualifying authority;
- Clause 19 (as modified by Schedule 33) - Power to extend the time limit of deemed planning permission; and
- Clause 22(1) and 22(2) and Schedules 18 and 19 (as modified by Schedule 33) - Power to disapply provisions related to listed buildings and ancient monuments.

These powers are exercisable in relation to matters within the legislative competence of the Scottish Parliament.

The Committee would therefore be grateful if you could explain why it is considered appropriate that these powers are exercised without a requirement for consultation with or consent from the Scottish Ministers?

I would be grateful if you were able to provide a response to these question by **Wednesday, 20 April 2022**.

I am writing in similar terms to the Scottish Government and copying this letter to the Scottish Parliament's Net Zero, Energy and Transport Committee.

Annex B

Letter from the Convener of the Delegated Powers and Law Reform Committee to Michael Matheson MSP, Cabinet Secretary for Net Zero, Energy and Transport

At the meeting of the Delegated Powers and Law Reform Committee on 29 March, the Committee considered the delegated powers relevant to Scotland in the [High Speed Rail \(Crewe Manchester\) Bill](#) as referred to in the [Legislative Consent Memorandum](#) (“the LCM”) lodged by the Scottish Government on 7 February 2022.

The Committee noted that the following powers to make regulations and rules by statutory instrument are exercised by the Secretary of State in consultation with the Scottish Ministers —

- schedule 5 Paragraph 15 (as modified by Schedule 33) – Designation of trunk or special roads;
- clause 18 (deemed planning permission) and Schedule 17 Paragraph 17 and 24(6) (as modified by Schedule 33) - Power to make provision about fees relating to requests for approval and appeals in connection with the payment of fees by means of a cheque;
- clause 18 (deemed planning permission) and Schedule 17 Paragraph 24 to 27 (as modified by Schedule 33) – Powers relating to modification of the appeals procedure;
- clause 58 - Power to make rules about the provision of arbitration of the Bill; and
- clause 22(1) and 22(2) and Schedules 18 and 19 (as modified by Schedule 33) - Power to disapply provisions related to listed buildings and ancient monuments.

The Committee noted that these powers are exercisable in relation to matters within the legislative competence of the Scottish Parliament. The Committee has therefore written to the UK Government to ask for the reasons why it considers it appropriate that they are exercised in consultation with Scottish Ministers, but without a statutory requirement to obtain the Scottish Ministers’ consent. The Committee also asked what it considers ‘in consultation with Scottish Ministers’ will mean in practice.

The Committee acknowledged that the Scottish Government considers that legislative consent can be recommended at this time for many, but not all, of the provisions identified as requiring consent. **The Committee nevertheless seeks further explanation as to why the Scottish Government considers it appropriate that these powers listed above are to be exercised in consultation with Scottish Ministers but without a statutory requirement to obtain the Scottish Ministers’ consent.**

The Committee also noted the following powers to make regulations are exercised by the Secretary of State, but that there is no requirement to consult Scottish Ministers—

- Clause 18 (deemed planning permission) and Schedule 17 Paragraph 13 (as modified by Schedule 33) – Power to specify qualifying authority;

- Clause 19 (as modified by Schedule 33) - Power to extend the time limit of deemed planning permission; and
- Clause 22(1) and 22(2) and Schedules 18 and 19 (as modified by Schedule 33) - Power to disapply provisions related to listed buildings and ancient monuments.

The Committee noted that these powers are exercisable in relation to matters within the legislative competence of the Scottish Parliament. The Committee has therefore also written to the UK Government to ask for the reasons why it considers it appropriate that these powers are exercised without a requirement for consultation with or consent from the Scottish Ministers.

It is noted from the LCM that the Scottish Government recommends that the Scottish Parliament gives its consent to a number of provisions related to planning matters, including the clauses noted above. **The Committee would nevertheless welcome further explanation on why you consider it appropriate that these powers may be exercised without a requirement to consult with or obtain consent from the Scottish Ministers?**

I would be grateful if you were able to provide a response to these questions by **Wednesday, 20 April 2022**.

I am copying both this letter and the letter to the UK Government, as referred to above, to the Net Zero, Energy and Transport Committee.