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Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee Report Legislative Consent Memorandum (LCM) on the High Speed Rail (Crewe to Manchester) Bill



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport.



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Introduction

1. A [Legislative Consent Memorandum](#) on the High Speed Rail (Crewe - Manchester) Bill (the UK Bill) was lodged by the Scottish Government on 7 February 2022. On 2 March, the Scottish Parliament agreed to refer the Memorandum to the Net Zero, Energy and Transport (NZET) Committee as lead Committee. This means that we must report on the Memorandum to the rest of the Parliament.
2. Amongst the provisions in the UK Bill objected to in the Memorandum are provisions containing order-making powers. Because of this, the Memorandum was also referred to the Delegated Powers and Law Reform Committee.
3. [The UK Bill](#) was introduced in the House of Commons on 24 January 2022. It is a UK Government Bill to authorise works on part of the new high-speed rail link (HS2) in England. This makes it a "Hybrid" Bill: i.e. a public Bill that has a distinct effect on the private rights of certain persons, such as those whose property will be affected by the works. Hybrid Bills at Westminster are subject to a distinct procedure to make sure private interests are taken account of. This means they typically progress more slowly than standard public Bills.
4. Amongst other things, the UK Bill would authorise the construction of a new train stabling facility for HS2 rolling stock in Annandale, Dumfries and Galloway. The depot would be located on agricultural land between the M74 and the West Coast Main Line, which runs between London Euston and Glasgow Central stations. In authorising the works at Annandale, and setting out how they should be legally regulated, the UK Bill seeks to make law in some areas that are devolved to the Scottish Parliament. This has triggered the lodging of the Memorandum. In the Memorandum, the Scottish Government explains:
 - That it has "strong support" for high speed rail and that it supports the new facility at Annandale;ⁱ
 - That it accepts the UK Government legislating in "many, but not all" of the provisions it has identified as requiring a legislative consent motion, the detail of which is discussed further below.ⁱⁱ

i Paragraph 10

ii Paragraph 11

Overview of the Committee's scrutiny

5. The Committee first considered our approach to the Memorandum on 8 March. As the works actually being authorised in Scotland are very geographically limited and directly affect only a few people, we decided to issue a call for written submissions targeted at a small number of stakeholders who might have views (although anyone else who wished to submit views would have been welcome to do so). Targeted stakeholders were either:
 - Rail industry stakeholders;
 - Local stakeholders, i.e. Dumfries and Galloway Council and the community council covering Annadale; or
 - Bodies that might have a professional or commercial interest in relation to those provisions in the UK Bill where the Scottish Government was recommending that the Scottish Parliament withhold consent. For instance, as the Memorandum recommends withholding consent in relation to clauses about Crown land, we contacted the Crown Estate.
6. We received just one response. This was [from Network Rail](#). They expressed strong support for the new high-speed link and the benefits they said it would bring to Scotland, as well as for the works at Annandale as a necessary element of the new link. They did not express specific views on the Scottish Government's objections to particular provisions, as set out in the Memorandum, but said that they had been working "closely and constructively" on the project with Transport Scotland and the UK Department for Transport.
7. Given what appeared to be an absence of strong views from relevant stakeholders on the Annandale works, and on the level and type of regulation which should apply to them, we subsequently agreed to limit our remaining scrutiny to one evidence session with the Scottish Government. On [24 May 2022](#), we took evidence from:
 - Jenny Gilruth, Minister for Transport;
 - Kevin Gibson, Solicitor, Scottish Government; and
 - Bill Reeve, Rail Director, Transport Scotland.

Discussion on the Memorandum

8. The Memorandum list several provisions in the UK Bill triggering the need for legislative consent where the Scottish Government would be content for that consent to be given. These provisions are diverse, covering issues such as tree preservation orders, works taking place on burial grounds, or protection of ancient monuments.ⁱⁱⁱ What most have in common is that they are matters that would be dealt with under Scottish town and country planning legislation were it not for the UK Bill. Reasons given in the Memorandum for the Scottish Government recommending consent in these areas tend to be either or both of the following (the second being the more common reason):
- Placing the Annandale works within the wider context of the entire works authorised by the Bill, the Scottish Government accepts the benefit of legal consistency in this area;
 - The Scottish Government considers that applying the law in England rather than in Scotland in this particular area, or indeed disapplying the usual level of legal regulation, will have only minor consequences. For example, the Scottish Government is satisfied that the impact of the Annandale works on historic buildings will be "very limited" and is therefore content for relevant Scots law in this area to be disapplied.^{iv}
9. The Memorandum lists five clauses in the UK Bill where it recommends the Scottish Government should not grant consent.^v These relate to the regulation of the Annandale works within these spheres:
- Protection of the water environment
 - Building standards
 - Roads
 - The Crown Estate.

More detailed explanations of why the Scottish Government objects to the UK Bill legislating in these areas is set out in the Memorandum. However, in essence the Scottish Government considers that the UK Government has not made clear why the requirements that would be found under the law in Scotland in these areas should not be applied in the case of the Annandale works.

The Scottish Government's evidence

10. The Minister for Transport opened her evidence by telling us:

ⁱⁱⁱ Paragraphs 12-38 of the Memorandum

^{iv} Paragraph 37 of the Memorandum

^v Paragraph 39 onwards

” ... we welcome the proposal to locate one of the HS2 train stabling and light maintenance depots in Annandale, near Gretna, and the highly skilled jobs that doing so should create. Scotland will also benefit immediately from faster train services upon completion of phase 1 of the HS infrastructure.^{vi}

11. The Minister confirmed that discussions were ongoing with the UK Government on their differences and that she was hopeful that progress would be made, especially as the legislative process for the UK Bill would likely last several more months.^{vii} The Minister told the Committee that Scottish Government officials were working closely with their counterparts and that there was "good collaborative working".^{viii} In this connection, we note receipt of [a letter from the Scottish Government's Chief Planner on 7 June 2022](#) advising us that the Scottish Government had reached agreement with the UK Government on the latter granting a "safeguarding direction", which gives the promoter of the HS2 works a right to be consulted on any planning applications in relation to the Annandale site.
12. In response to a question as to whether these ongoing differences could lead to the delay of the Annandale works, the Minister said that she hoped not and that "I do not want to get us into conflict" but that it was "for the UK Government to state its position directly to the Committee."^{ix}
13. The Committee notes from the Minister's comments, and from the discussion in the Memorandum itself, that the differences the Minister referred to do not relate merely to whether or not it is right that the UK Bill takes power in certain devolved areas. Another area of difference is as to how many of the Bill's provision actually intrude into devolved areas. The Scottish Government's list of such provisions is longer than the UK Government's list.^x In other words, the Memorandum outlines a *legal* disagreement between governments as well as a *policy* one, and it is to this that she appeared to mainly be referring when she said it was for the UK Government to "state its position".
14. This situation is similar, if not quite identical, to the situation that arose the [last time we reported on a Legislative Consent Memorandum](#). On that occasion, the disagreement between governments was as to whether a Memorandum was needed at all (i.e. as to whether there actually were any triggering provisions in the relevant UK Bill). Comments we made in that report bear repeating here:

” "In this situation, it is not within the power of any committee to comment authoritatively on which government is right. We further note that the principle of the confidentiality of legal advice means we are unsighted on the legal briefing Ministers in both administrations would have received on the reserved-devolved dividing line..."^{xi}

vi Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Col 10

vii Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Col 11

viii Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Col 12

ix Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Cols 11-12

x Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Col 10-11; Legislative Consent Memorandum, paragraphs 6-9

xi Net Zero, Energy and Transport Committee, Report on the Supplementary Legislative

15. The Committee sought to explore with the Minister and officials how they were seeking to resolve their differences with the UK Department of Transport: what matters were being discussed? The Minister told us that "the practical implications of the bill are not yet clear."^{xii} She said that she was hopeful of a positive outcome on the issue of Crown land and hoped to be able to write to the Committee about that soon.^{xiii}

16. In relation to a question specifically about the impact of provisions disapplying the usual requirements in relation to safeguarding the water environment when undertaking works, Mr Gibson told us:

” A feature of the discussions at official level is exactly that question: what would the practical implications be of the disapplication of the regulations? The bill takes a blanket approach to these matters, as it does for works in England and Wales, which are far more extensive, obviously. We need to get to the bottom of what the practical impact would be on, for example, the water environment were the regulations to be disappplied. Another set of provisions that will be disappplied in Scotland are the protections for historic buildings. Ministers have been able to recommend consent for that, because we have been able to confirm with the Department for Transport that no historic buildings will be affected by the works in Scotland. Those are the sorts of discussions that are taking place.^{xiv}

Consent Memorandum on the UK Environment Bill, 29 September 2021, paragraphs 15-16

^{xii} Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Col 11

^{xiii} Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Col 12-13

^{xiv} Net Zero, Energy and Transport Committee, [Official Report 24 May 2022](#), Col 14

Delegated Powers and Law Reform

Committee scrutiny

17. The Delegated Powers and Law Reform (DPLR) Committee considered the Memorandum at its meetings on [29 March](#) and [3 May 2022](#) and published [a report with its recommendations on 4 May 2022](#). During its consideration, it raised with the UK Government a number of questions concerning certain delegated powers and was satisfied with most of the responses it received.
18. The DPLR Committee continued to pursue one issue with the UK Government while we were taking evidence. This was a power in relation to the designation of trunk or special roads. It [wrote to the UK Government](#) to ask why this power in the Bill was drafted so as to be exercisable in relation to Scotland, given that the Annadale works do not appear to affect Scotland's trunk road network.
19. We note that the UK Minister [responded on 8 June](#), after our evidence session with the Scottish Minister for Transport, advising that this clause had been so drafted on "pragmatic" grounds. He said that proposed works in Hybrid Bills are often amended as the Bill progresses, and as evidence comes in, and that it was "expedient for the Bill to contain powers which could be necessary to construct an amended scheme, even if they are not necessary to deliver the scheme in the Bill as deposited."

Conclusions and recommendations

20. The Committee notes that this Legislative Consent Memorandum is about works that may bring skilled jobs to the local area at Annandale in Dumfries and Galloway, and also help enable faster rail connections on the West Coast Main Line: two outcomes that the Scottish Government says it supports.

21. The Committee asks the Parliament to note that we sought views on issues raised in the Memorandum from a targeted group of relevant stakeholders and received a very muted response. However, we expect that anyone with an interest in the success of the proposed works at Annandale would wish to see the Scottish and UK Governments resolve their differences soon, so that they can be assured the works will go ahead.

22. The Committee notes that some of these differences are legal: they are differences about whether a particular provision intrudes into devolved law. It is generally difficult for a Parliamentary Committee to take a position on such disputes and we have not sought to do so in this case. But we call on the Scottish and UK Governments to reach a sensible and pragmatic accommodation.

23. In relation to provisions where the Scottish and UK Governments are agreed that the need for consent is triggered, but the Scottish Government is currently calling for consent to be withheld, we advocate for the same pragmatic approach. It is welcome that the Scottish Government should perform due diligence on the regulation of the proposed Annandale works, and the Scottish Government's views that ongoing dialogue at official level has been constructive has provided some assurance. But the regulatory issues raised do not seem large and the two sides should be able to reach an agreement.

24. It would have been possible for the Committee to delay this report. We are reporting now because we would like to see issues raised in the Memorandum resolved before they become a drain on human resources, at a time when there are other transport priorities to focus on.

