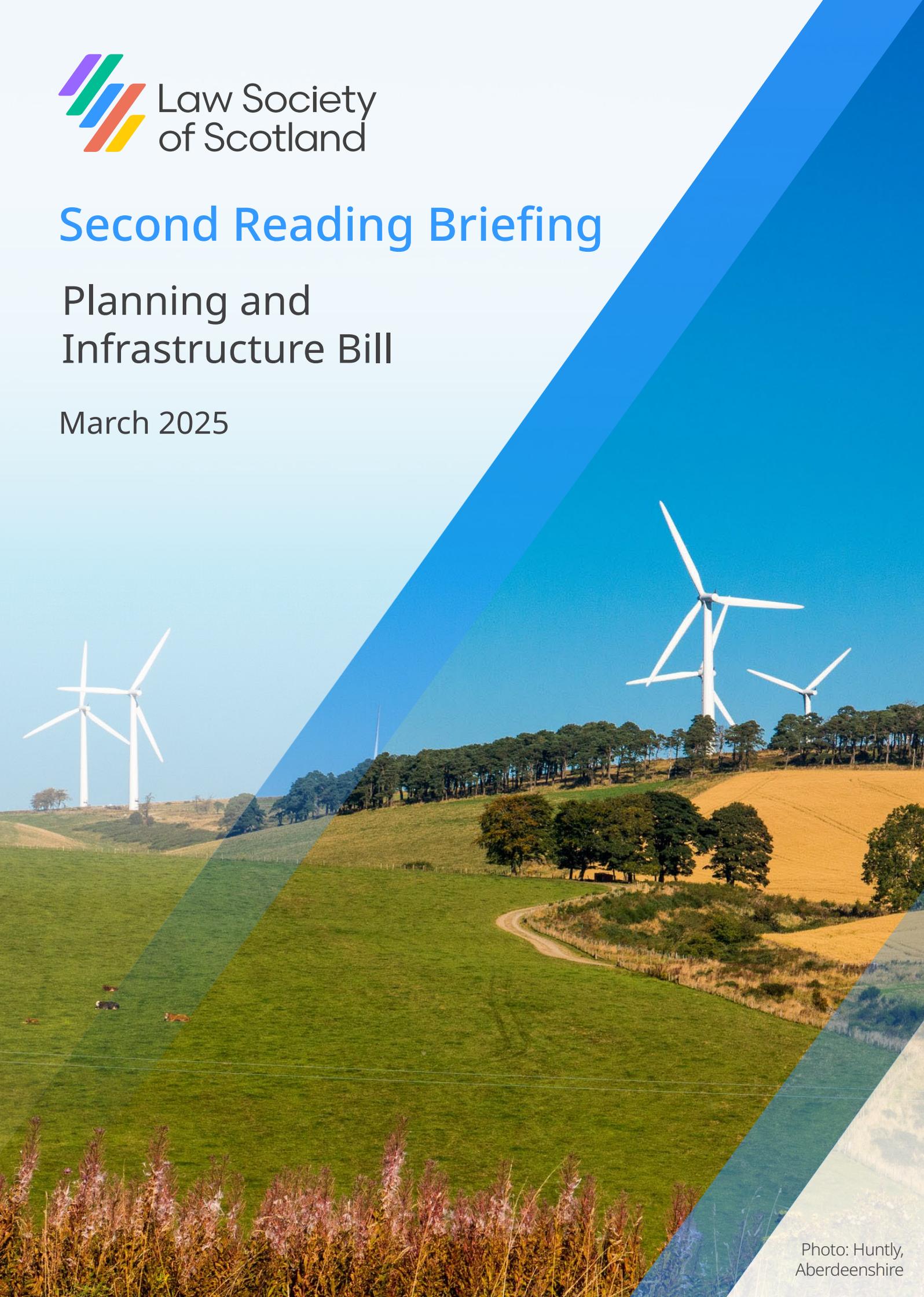


Second Reading Briefing

Planning and Infrastructure Bill

March 2025



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and provide comments on the Planning and Infrastructure Bill¹ (“the Bill”) ahead of the Second Reading in the House of Commons scheduled for 24 March 2025. We have the following comments to put forward for consideration.

The briefing includes the following key points:

- In respect of consents for electricity infrastructure in Scotland, we welcome the Government’s commitment to aligning pre-application requirements with the planning system in the Town and Country Planning (Scotland) Act 1997.
- We note that much of the detail of electricity infrastructure consenting in Scotland will be left to regulations. Whilst the use of appropriate delegated powers within the legislation can allow for a degree of flexibility, this needs to be balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation.
- We reiterated our concerns regarding the potential for a transition to Environment Outcome Reports to impact on well-established and well-understood Environmental Impact Assessment processes in Scotland.
- We note some concerns regarding the transitional arrangements for electricity infrastructure consenting in Scotland and highlight the need for clarity and certainty on how the provisions of the Bill will apply to existing and new applications.

General Comments

The Bill was introduced in the House of Commons on 11 March 2025. It comprises 97 clauses and 6 schedules. However, much of the Bill does not apply to Scotland. We have therefore restricted our comments only to those sections of the Bill which will apply to Scotland.

¹ [Planning and Infrastructure Bill - Parliamentary Bills - UK Parliament](#)



Part 1- Infrastructure

Chapter 1- Nationally Significant Infrastructure Projects

Clauses 1 to 7 extend and apply to England and Wales (and to a limited extent Scotland i.e. where a project is a pipeline, one end of which is in Scotland).²

We have no specific comments on these provisions of the Bill.

Clause 8 does not apply to Scotland.

Chapter 2- Electricity Infrastructure

Clauses 9 to 13 (connections to the electricity transmission and distribution system) extend and apply to England, Wales and Scotland.

We have no specific comments on these provisions of the Bill.

Clauses 14 to 19 (consents for electricity infrastructure in Scotland) extend to England, Wales and Scotland but apply to Scotland only. We note that the legislative consent process will be engaged in the Scottish Parliament. We also note that the UK and Scottish governments have worked jointly to develop reforms with the aim of modernising the Electricity Act 1989 process and removing inefficiencies.³

These provisions largely give effect to the proposals set out in the UK Government's 2024 consultation: *Electricity infrastructure consenting in Scotland*.⁴ We responded to that consultation in November 2024.⁵

In our response to the 2024 consultation, we generally welcomed the proposals and attempts to modernise the legislation and processes relating to electricity infrastructure consenting in Scotland. We consider that reforms in this area must be reflective of three overarching principles:

1. We consider that the reforms should replicate the procedures under the planning system in the 1997 Act in Scotland, unless there is a clear reason to depart from this. We consider that this will provide consistency and make the system easier to understand. An example of that would be an opt-in procedure in relation to an examination for objectors.
2. We consider that it would be more helpful and aid clarity and certainty if the procedures were consistent across both onshore and offshore projects, unless there is a clear reason to depart from this approach.
3. Where possible the changes should reduce, or avoiding adding, bureaucracy in the process.

² Explanatory Notes to accompany the Bill, at para 201: [240196en.pdf](#)

³ Explanatory Notes, at para 33.

⁴ [Electricity infrastructure consenting in Scotland - GOV.UK](#)

⁵ [24-11-29-plan-electricity-infrastructure-consenting-in-scotland.pdf](#)

Clause 14 amends Schedule 8 to the Electricity Act 1989 to allow for: pre-application requirements to be established; and for the Scottish government to be able to charge fees for this stage of the process; application information requirements to be set; management of the pace of key stages of the application phase; and a new examination process to respond to an objection from a relevant planning authority.

We welcome the Government's commitment that *"To ensure that the pre-application requirements are simple, easy to follow and unbureaucratic, requirements will be streamlined, aligned between onshore and offshore applications (with exceptions for practical differences between regimes), and aligned with the Town and Country Planning (Scotland) Act 1997 where possible."*⁶ Whether or not this commitment is delivered will largely depend on the detail of subsequent secondary legislation.

We welcome the introduction of a new examination process to respond to an objection from a relevant planning authority (clause 14(4)). We were supportive of these proposals at consultation stage, noting that they reflect the direction of travel in the planning system, and that it seems appropriate to have a consistent approach. In our response to the 2024 consultation we highlighted the advantages of oral hearings and we therefore welcome that the Bill allows for a flexible and proportionate approach to be taken, including a hearing or public inquiry where necessary. We note, however, that the new provisions would only apply where there is an objection from the Local Authority. They would not apply where there are objections from other parties made under paragraph 3 of schedule 8 – which would continue to be subject to the existing rules. It would seem appropriate for similar provisions to apply in cases where there may not be an objection from the LPA, but there are objections from other parties, for example NatureScot or HES. This could be achieved by extending the scope of clauses 14(3) and 14(4) of the Bill so that these apply to paragraph 3 of schedule 8 as well as paragraph 2.

We note the new paragraph 1A(2) of Schedule 8 to the 1989 Act would allow the regulations to provide for an acceptance stage during which the Scottish Ministers must assess an applicant's compliance with any requirements imposed by the regulations in order to decide whether or not to accept the application. We commented in the consultation that the proposal to introduce an acceptance stage appeared to be influenced by the procedure in relation to nationally significant infrastructure projects pursuant to the Planning Act 2008. We noted that the procedural requirements for development consent orders under the 2008 Act are more onerous than for applications under the 1989 Act and questioned whether an acceptance stage was a proportionate requirement as opposed to adapting sections 39(1A) and (1B) of the Town and Country Planning (Scotland) Act 1997 to require additional consultation if this is considered necessary. Whilst

⁶ [Electricity Infrastructure Consenting in Scotland: government response](#), at page 17

this may be a matter for regulations, we consider it important that any revised procedure is not unduly legalistic.

It is not clear whether the new procedures in paragraph 1A of Schedule 8 would apply to applications for variation submitted in terms of section 36C. We would recommend that this is clarified.

We note that clause 14(5) provides power for regulations to specify a time limit for actions which need to be taken in relation to an application for consent under section 36 or 37. Given that the aim of the Bill is to simplify and speed up the consenting process we would suggest that consideration is given to the specification of time limits being a duty as opposed to a discretion.

Clause 14 does leave much of the detail to regulations. We note generally the importance of there being clarity and certainty in the law. The use of appropriate delegated powers within the legislation can allow for a degree of flexibility to include such detailed information and update this from time-to-time. However, we note the need for flexibility to be appropriately balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation. We would welcome the opportunity to comment on the detail of draft regulations.

Clause 15 provides for a prescribed process for variations to consents for overhead lines to be established; and for Scottish Ministers to make variations to consents where necessitated by technological and environmental factors and to correct errors where necessary.

We welcome there being a clear system for variations. We note that the Bill adopts a narrower approach than the proposals consulted on in 2024, limiting the power for Ministers to have power to vary a consent if there has been a change of technological or environmental circumstances by requiring agreement to be obtained from the consent-holder. We are supportive of this approach, which we consider will avoid uncertainty whilst still allowing Ministers to take a proactive approach where appropriate.

Clause 16 extends the statutory appeal process which currently applies to offshore consenting decisions to onshore consenting decisions and variation decisions. We welcome this extension.

Clause 17 makes provision for fees to be charged for necessary wayleaves. We have no specific comments on this provision of the Bill.

Clause 18 makes provisions about regulations, and clause 19 makes minor and consequential amendments further to sections 14 to 18. We have no specific comments on these sections.

Clause 20 (environmental impact assessments for electricity works) extends and applies to Scotland only. We note that the legislative consent process will be engaged in the Scottish Parliament. We note that this provision enables amendment of the Electricity Works (Environmental Impact Assessment)



(Scotland) Regulations 2017 for limited purposes, to enable delivery of the objectives of the reform package.⁷ We have previously⁸ highlighted our concerns regarding the potential for a transition to Environment Outcome Reports to impact on well-established and well-understood Environmental Impact Assessment processes in Scotland. We note that the Bill makes only very minor provision in relation to EORs (see section 93).

Clause 21 (long duration electricity storage), clause 22 (benefits for homes near electricity transmission projects) and clause 23 (electricity transmission systems: extension of commissioning period) extend and apply to England, Wales and Scotland. We have no specific comments on these clauses.

Clause 24 does not apply to Scotland.

Chapter 3- Transport Infrastructure

Clauses 25- 41 do not apply to Scotland.

Clause 42 (fee for applications for harbour orders) extends and applies to England, Wales and Scotland. We note that the legislative consent process will be engaged in the Scottish Parliament. We have no specific comments on this provision.

Clause 43 does not apply to Scotland.

Parts 2-5 of the Bill

Parts 2-5 of the Bill do not apply to Scotland.

Part 6- Miscellaneous and General Provision

Part 6 (Miscellaneous and General Provision) extends and applies UK-wide.

In respect of transitional arrangements, we note that the Government response to the 2024 consultation indicates that government will proceed with the transition proposals set out in the consultation, namely that the new consenting process will apply to all applications, starting from whatever stage they are at within the consenting process.⁹ In our response to the 2024 consultation, we highlighted that we did not agree with the proposals for transitional arrangements, indicating that we considered it would be more appropriate for the revised process to apply to new applications once the changes come into effect. It is important that there is clarity and certainty on how the provisions of the Bill will apply to existing and new applications.

⁷ Explanatory Notes, para 34

⁸ [23-01-13-levelling-up-and-regeneration-bill-second-reading-briefing-hol_-003.pdf](#)

⁹ [Electricity Infrastructure Consenting in Scotland: government response](#), at page 40



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