

The Welsh Government's Legislative Consent Memoranda on the Energy Bill

September 2023



1. Background

The Energy Bill

1. The Energy Bill¹ (the Bill) was introduced into the House of Lords and had its first reading on 6 July 2022. It is sponsored by the Department for Energy Security and Net Zero.

2. The Explanatory Notes to the Bill as introduced state:

“The aim of the Bill is to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK’s climate change commitments and reform the UK’s energy system while minimising costs to consumers and protecting them from unfair pricing.”²

3. The long title to the Bill states that it is a Bill:

“to make provision about energy production and security and the regulation of the energy market, including provision about the licensing of carbon dioxide transport and storage; about commercial arrangements for industrial carbon capture and storage and for hydrogen production; about new technology, including low-carbon heat schemes and hydrogen grid trials; about the Independent System Operator and Planner; about gas and electricity industry codes; about heat networks; about energy smart appliances and load control; about the energy performance of premises; about the resilience of the core fuel sector; about offshore energy production, including environmental protection, licensing and decommissioning; about the civil nuclear sector, including the Civil Nuclear Constabulary; and for connected purposes.”

4. Report stage and Third reading in the House of Commons took place on 5 September 2023. At the time we agreed our report, Lords’ consideration of Commons’ amendments was scheduled to take place on 12 September.

¹ [Energy Bill](#), as introduced (Bill 39)

² [Energy Bill, Explanatory Notes](#), as introduced, July 2022, paragraph 1

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- 5.** Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.
- 6.** On 29 June 2023, Julie James MS, Minister for Climate Change (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.³
- 7.** The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Climate Change, Environment and Infrastructure Committee, should report on the Memorandum by 15 September 2023.⁴
- 8.** Also on 29 June 2023, the Minister wrote to the Llywydd, the Rt Hon Elin Jones MS, stating that the Memorandum covers the Bill as it was introduced to the UK Parliament in July 2022 and, given the amendments subsequently made to the Bill, a supplementary legislative consent memorandum would be required and would be laid as soon as possible.⁵
- 9.** On 25 July 2023, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill.⁶
- 10.** Also on 25 July, the Minister again wrote to the Llywydd, this time in relation to Memorandum No. 2, stating that it covers amendments to the Bill which relate to the Offshore Wind Environmental Improvement Package (OWEIP) which were tabled as new clauses to the Bill on 9 January 2023 (with further amendments made on 7 June 2023). The Minister notes that a further supplementary legislative consent memorandum will be required to address other amendments to the Bill, which would be laid as soon as possible. The Minister also notes that the Bill is expected to move through the final stages in the UK Parliament in September 2023.⁷

³ Welsh Government, [Legislative Consent Memorandum on the Energy Bill](#), 29 June 2023

⁴ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Energy Bill](#), July 2023

⁵ [Letter from the Minister for Climate Change to the Llywydd](#), 29 June 2023

⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Energy Bill](#), 25 July 2023

⁷ [Letter from the Minister for Climate Change to the Llywydd](#), 25 July 2023

11. On 4 September 2023, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of the Bill.⁸

12. To accompany the laying of Memorandum No. 3, on 1 September 2023 the Minister wrote again to the Llywydd and, also, to the Chairs of the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Infrastructure Committee.⁹ In the letter, the Minister:

- confirms that Memorandum No. 3 covers the Bill as it left the House of Commons Committee Stage as published on 11 July 2023 and amendments which relate to Parts 1, 2, and 11 of the Bill;
- states that the Welsh Government remains in discussion with the UK Government on the Bill but, to date, she has “not had an acceptable offer of amendments” to address the points raised in the Memorandum or in Memorandum No. 2;
- acknowledges that she is “outside the normal two-week Standing Order 29 deadline for the laying of this supplementary LCM”, adding that this is “in part due to handling of the Bill by the UK Government but also due to the complexity of the issues under consideration”.

13. The Minister adds in her letter that Commons Report Stage and Third Reading for the Bill is scheduled to take place four days later, on 5 September 2023, and that Lords consideration of amendments is expected to commence on 12 September. The Minister states:

“I am incredibly concerned that the current scheduling of this Bill will leave insufficient time to resolve concerns at an intergovernmental level, and the Senedd with no meaningful opportunity to consider their position on consent. I have asked that UK Ministers take immediate steps to postpone the scheduling of final Commons’ Stages to enable further time for discussions, and to enable the Senedd to consider this Bill at a meaningful stage.”¹⁰

14. The Minister adds:

⁸ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Energy Bill](#), 4 September 2023

⁹ [Letter from the Minister for Climate Change](#), 1 September 2023

¹⁰ Letter from the Minister for Climate Change, 1 September 2023

“Based on the current timetable I am left in the regrettable position of seeking the Senedd debates the Legislative Consent Motion for the Bill at its earliest opportunity, 12 September 2023. I appreciate that this will mean that relevant Senedd Committees would be afforded no scrutiny opportunity for the sLCMs laid during recess, and will likely not have reported on the LCM laid on 29 June 2023. However, holding the debate on this date will enable the Senedd's position to be made clear to UK Government and Parliament as soon as possible. (...)

I am aware that Business Committee has previously set a reporting deadline of 15 September for the original LCM. Should either the Legislation, Justice and Constitution Committee or the Climate Change, Environment and Infrastructure Committee be in a position to issue a report prior to the debate on 12 September, I will respond accordingly in the Senedd debate and in writing as required.

I recognise, however, the significant difficulty this is likely to cause and the reality that this may prove unworkable. I will therefore also take steps to table a motion to suspend Standing Order 29.8 to enable the debate to take place on 12 September, along with relevant suspensions for Standing Orders 11.16 and 12.20(i).

I greatly respect and appreciate the role of the Senedd's Committees within the legislative consent process, and deeply regret this situation. However, as previously stated, I believe the current trajectory of this Bill makes it essential that the Senedd's position can be articulated with urgency.”¹¹

15. On the subject of the legislative consent convention, the Minister states:

“Of even greater concern is the possibility that this Bill will be pushed through Parliament regardless of the potential lack of Senedd consent. Constitutional convention is that Parliament will not normally legislate with regard to devolved matters without the consent of the Senedd. There is absolutely no reasonable rationale that can be presented that this legislation is ‘not normal’. I have therefore sought unequivocal assurance

¹¹ Letter from the Minister for Climate Change, 1 September 2023

that, should the Senedd not consent to this Bill, the UK Government will commit to their stated respect for the Sewel Convention, and not legislate in relation to Wales.”¹²

Provision for which the Senedd's consent is required

16. The Welsh Government's assessment about which provisions in the Bill require the Senedd's consent and recommendations on which should receive the Senedd's consent is set out in paragraphs 11 to 15 of the Memorandum¹³, in paragraphs 14 to 20 of Memorandum No. 2¹⁴, and in paragraphs 13 to 33¹⁵ of Memorandum No. 3¹⁶.

17. The Senedd's consent is therefore required for approximately 130 clauses in the Bill plus provisions in the relevant accompanying Schedules.

The Welsh Government's position on provisions for which the Senedd's consent should be sought

18. At paragraph 12 of the Memorandum, the Minister states:

“A large number of levers relating to energy policy are reserved. However, given the complexity in reserved and devolved powers, legislative consent will be required in a number of areas. Welsh Ministers have written to the UK Government to raise concerns that the Bill as drafted does not respect the legislative competence of the Senedd nor the devolved responsibilities of Welsh Ministers and that the UK Government should seek Welsh Ministers' consent to any secondary legislation which impacts devolved competence. The Welsh Government recommends withholding consent to the relevant clauses at this time.”

19. Specifically on the OWEIP clauses which are the subject of Memorandum No. 2, at paragraphs 19, 20 and 22 of Memorandum No. 2 the Minister states:

¹² Letter from the Minister for Climate Change, 1 September 2023

¹³ Clause and Schedule numbering reflects [Bill as introduced into the House of Lords](#)

¹⁴ Clause and Schedule numbering reflects [Bill as amended in House of Commons' Public Bill Committee](#)

¹⁵ See also Memorandum No. 3, paragraphs 36 and 37.

¹⁶ Clause and Schedule numbering reflects [Bill as amended in House of Commons' Public Bill Committee](#)

“While the Welsh Government agrees that the intention behind the OWEIP clauses is sensible, my key concern is a failure to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence.

The provisions where Welsh Government has specific concerns are summarised in the table below, which follows the format of the Energy Bill LCM. I have written to the Secretary of State twice regarding the changes I would like to see to the clauses. Currently these issues are unresolved. (...)

In my view the OWEIP clauses currently fail to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. Given these concerns, I recommend the Senedd withholds consent to the OWEIP clauses in the Bill at this time.”

20. In relation to the amendments made to the Bill which are the subject of Memorandum No. 3 and in respect of developments around the Bill more broadly, the Minister states:

“There has been continued discussions with the UK Government on the Bill where I have repeated my position that where regulations are to be introduced that impact on devolved matters the consent of Welsh Ministers needs to be sought. The UK Government has maintained their position that a process of consultation is sufficient.

I remain of the view that there is no reason why we cannot work together to deliver cross-border regulation in a way that avoids regulatory divergence through a process that requires the consent of Welsh Ministers in areas of devolved competence. A process of consultation is not a satisfactory safeguard from a constitutional perspective. (...)

The Welsh Government welcomes a number of the amendments to the Bill as they provide useful clarifications and additional detail on how the measures first introduced in the Bill will operate. It remains the position of the Welsh

Government that the contains essential provisions to help support the transition of the UK towards net zero.

As with the Bill as introduced, in a number of areas, the amendments made to the Bill do not sufficiently respect the competence of the Senedd. Specifically, the Welsh Government recommends the Senedd withhold consent on clauses 9, 73, 106 to 126, 127 and 259 and we are seeking a requirement for the Secretary of State to seek the consent of Welsh Ministers before new regulations with respect to Chapters 5 and 6 of Part 2, and Part 11 can come into effect. The following table summarises my position.”¹⁷

21. The Minister reaffirmed these points in her letter on 1 September 2023.¹⁸

The Welsh Government's approach to the Bill and to the legislative consent process

22. As noted in paragraph 1, the Bill was introduced to the UK Parliament on 6 July 2022.

23. The Welsh Government's Memorandum was therefore laid before the Senedd 51 weeks after the Bill had been introduced to the UK Parliament.

24. The Standing Orders require the Welsh Government to lay a legislative consent memorandum for relevant UK Bills 'normally' within two weeks.

25. The Scottish Government laid a legislative consent memorandum on the Bill before the Scottish Parliament in September 2022, and a supplementary legislative consent memorandum then followed on 25 January 2023. The Scottish Parliament's Delegated Powers and Law Reform Committee and relevant policy committee scrutinised the **legislative consent memoranda**.

26. In her letter to the Llywydd on 29 June 2023, the Minister stated:

“I appreciate that we are well outside the normal two-week Standing Order 29 deadline for the laying of an LCM. This has been in part due to handling of the Bill by the UK Government

¹⁷ Memorandum No. 3, paragraphs 11, 12, 36 and 37

¹⁸ Letter from the Minister for Climate Change, 1 September 2023

but also due to the complexity of the issues under consideration.”

27. In the Memorandum, the Minister states that the Welsh Government was not involved in the development of the Bill before its introduction, and “the full legal text [of the Bill] was not available for review until hours before its introduction to the House of Lords”¹⁹.

28. The comments about the handling of the Bill by the UK Government notwithstanding, at paragraphs 20 to 22 of the Memorandum, the Minister states:

“In my view it is appropriate to deal with these provisions in this UK Bill as an efficient way to introduce legislation extending to Wales, in particular where policy is generally aligned. A number of schemes or regimes are more appropriate introduced at a pan-UK level, given the cross-border territorial nature of the activities being regulated.

Energy policy is a complex mix of reserved and devolved matters, and the Energy Bill provides a vehicle for a coherent approach to delivery.

However, there are a significant number of matters of concern which will need to be resolved urgently before consent can be recommended. My key concern is a failure to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. It is essential to ensure Welsh Ministers can influence pan-UK schemes or policies that impact significant cross-border projects. There are a number of other amendments suggested, as outlined in the table in paragraph 15 [of the Memorandum].”

29. We first considered the Memorandum on 3 July 2023²⁰ and wrote to the Minister the very same day²¹, noting our serious concerns about the Welsh Government’s approach to the Memorandum, not least because of the 51 weeks taken to lay the Memorandum.

¹⁹ Memorandum, paragraph 9

²⁰ ~~Legislation, Justice and Constitution Committee~~, 3 July 2023

²¹ ~~Letter to the Minister for Climate Change~~, 3 July 2023

30. Given our concerns, and following our invitation, we took evidence from the Minister on 10 July 2023.²² The Minister told us:

- “We would have very much wanted for the Welsh Government to have been involved in the development of the Bill months before the Bill was published. We would have had detailed discussions with UK Government Ministers on matters within our competence and so on. Not a single scrap of that happened at all. Nothing, absolutely not.”²³
- “I'm quite annoyed by the situation the UK Government has put [us] in where we're struggling to keep up with the changes in a Bill that are rapid and don't involve us at the right level at all.”²⁴
- “...there's just nothing good to say about the way the UK Government has treated the devolution settlement. The Bill has been drafted without any nod to devolution whatsoever. (...) from a political point of view, I would say that it's news to the energy team [in the UK Government] that there is such a thing as a devolution settlement. It's been a hard-fought battle to get them to even understand what we're trying to say.”²⁵
- “I have, a number of times, not just in this instance, been summoned to speak to a Minister of the UK Government at 17:30 with no idea of what they want to talk to me about, only to be told that tomorrow morning, they're going to publish X, so that they can say they've consulted us. Well, I'm sorry, I don't think that's sufficient consultation at all.”²⁶
- “I've made a number of representations to the Secretary of State for BEIS, as it was then, and the Secretary of State and Ministers within the new Department for Energy Security and Net Zero. In March this year, following the UK Government amendments, with the offshore wind environment improvement package, I set out my concerns to the new Secretary of State on the clauses and on the initial considerations of the Bill. I've requested a meeting to discuss the concerns, but no offer to meet has been forthcoming. The first and only meeting on this Bill I have had with a UK Government Minister was with Minister Bowie in May 2023, and I have to say, in that meeting, Minister Bowie showed no appreciation that any kind of devolution settlement existed. There's no

²² Legislation, Justice and Constitution Committee, 10 July 2023

²³ LJC Committee, 10 July 2023, RoP [6]

²⁴ LJC Committee, 10 July 2023, RoP [7]

²⁵ LJC Committee, 10 July 2023, RoP [14]

²⁶ LJC Committee, 10 July 2023, RoP [19]

getting away from that. It was a very short meeting, and their view was that it just doesn't engage the devolution—. Well, they just didn't have any appreciation of it at all.”²⁷

- “We do normally have much better engagement. (...) but I think that what we're looking at here is somebody who just did not realise that there was any devolution issue in it until the last minute.”²⁸

31. Following the evidence session with the Minister, we wrote to Andrew Bowie MP, UK Government Minister for Nuclear and Networks, on 12 July 2023.²⁹ We received a response 24 July 2023.³⁰

32. The Minister for Nuclear and Networks told us he did not recognise the remarks made by the Minister, that he was committed to the Sewel Convention, and that he has a fundamental interest in ensuring that the Bill works to the benefit of every part of the UK. He added that the Bill “respects the devolution settlement while ensuring that we limit regulatory divergence as far as possible in the interests of supporting cross-border nascent industries like CCUS³¹ and hydrogen.”³²

33. The Minister for Nuclear and Networks stated:

“I do not believe it is the case that the Welsh Government had no knowledge of the Bill's contents prior to its introduction. My officials shared draft clauses where possible and held a series of ‘deep dive’ sessions with Welsh Government officials on each measure well in advance of the Bill's introduction.

Notwithstanding the short delay to the Bill when the urgent Energy Prices Act 2022 was prioritised, and the additional complexities associated with large pieces of legislation, the Welsh Government has now had the best part of a year to consider it.

When the Bill was first introduced in the UK Parliament, my predecessor wrote to Minister James to set out the UK Government's devolution analysis and seek her support for an

²⁷ LJC Committee, 10 July 2023, RoP [29]. See also RoP [20]

²⁸ LJC Committee, 10 July 2023, RoP [21]

²⁹ [Letter to the UK Government](#), 12 July 2023

³⁰ [Letter from the UK Government](#), 24 July 2023

³¹ Carbon Capture Usage and Storage (CCUS)

³² Letter from the UK Government, 24 July 2023

LCM for the devolved provisions. At subsequent amending stages in the UK Parliament, my predecessors and I wrote to Minister James in similar terms.

My officials have sought to engage their counterparts extensively about the Bill, including seeking weekly meetings since the Bill was introduced. In addition, there have been many conversations, meetings, and emails between Welsh Government officials and UK Government officials who lead on the Bill's individual measures. (...)

In the committee session, Minister James raised concerns around ensuring sufficient time for consultation on draft proposals. My department will always seek to engage the Welsh Government at the earliest opportunity. This is why, within the context of the Energy Bill, I proposed to Minister James that the Bill is amended to introduce new statutory protections which ensure that consultation on draft proposals for secondary legislation would take place over a statutory period of time.

Minister James also raised discussions between the UK and Welsh governments relating to offshore wind. I have responded to several of Minister James's letters on the offshore wind environmental improvement measures in the Bill and I discussed the Energy Bill issues with Minister James when we met on 22 May 2023. The offshore wind measures were also discussed in a meeting between Minister Stuart and Minister James on the 26 April 2023. My door is always open to further discussions on this and any other matter."³³

34. The Minister for Nuclear and Networks also told us:

"The Welsh Government's delay in laying the Legislative Consent Memorandum has not helped our discussions. Indeed, the Memorandum presents the first instance I have seen which sets out the Welsh Government's concerns with the Bill in full. As the Memorandum only covers the Bill as introduced, I still do not know the Welsh Government's position on large parts of the Bill which have been amended. Close engagement between UK

³³ Letter from the UK Government, 24 July 2023

*and Welsh Government officials has mitigated these shortcomings to an extent and has allowed for a package of amendments to be shared at official level. I intend to write to Minister James shortly to set out these amendments formally.*³⁴

2. Committee consideration

35. As highlighted above in Chapter 1, we first considered the Memorandum at our meeting on 3 July 2023.

36. Again, as highlighted above, we took evidence from the Minister on 10 July, following which we wrote to the UK Government.

37. We noted Memorandum No. 2 and Memorandum No. 3 at our meeting on 11 September 2023 but had insufficient time to undertake any meaningful scrutiny.³⁵ We agreed our report at the same meeting.

Our view

Provisions requiring legislative consent

38. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum, Memorandum No. 2 and Memorandum No. 3.

39. We agree that all clauses and Schedules listed in the Memorandum, Memorandum No. 2 and Memorandum No. 3 require the consent of the Senedd.

Conclusion 1. We consider that the clauses of the Bill and the Schedules to the Bill set out in the Memorandum, Memorandum No. 2 and Memorandum No. 3 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

The Welsh Government's approach to the Bill and the legislative consent process

40. We highlight in Chapter 1 of our report that, while the Bill was introduced into the UK Parliament on 6 July 2022, the Minister did not lay the first legislative consent memorandum for the Bill until 29 June 2023. This 51 week delay is

³⁴ Letter from the UK Government, 24 July 2023

³⁵ [Legislation, Justice and Constitution Committee](#), 11 September 2023

unprecedented. Furthermore, when the Memorandum was eventually laid before the Senedd, it was based on the Bill as it had been introduced a year earlier, and took no account of the amendments that had been made to the Bill months earlier and which also required the consent of the Senedd.

41. Similarly Memorandum No. 2, laid before the Senedd on 25 July 2023, reflected amendments made to the Bill in January 2023, constituting a delay of seven months.

42. In her letter to the Llywydd on 25 July 2023 – sent during the Senedd's summer recess period – the Minister confirmed that a further supplementary legislative consent memorandum would be needed for other amendments made to the Bill while also acknowledging that the Bill was expected to move through its final stages in the UK Parliament in September.

43. The Minister and her officials will have known that the UK Parliament's standard return in early September due to its traditional conference recess break would have meant that the Senedd's consenting role would be compromised. This is the situation the Minister herself confirmed in her letter on 1 September stating that Report Stage and Third Reading in the House of Commons – the final substantive stages – would take place on 5 September 2023, a week before the Senedd autumn term begins.

44. This Bill applies to the United Kingdom and so the consent process was also engaged in the Scottish Parliament.³⁶ It is noteworthy that the approach and engagement on this Bill in Scotland between the Scottish Government and Parliament lies in stark contrast to what has happened here in Wales. We note that the Scottish Government laid its legislative consent memorandum on 28 September 2022, 10 months prior to the Welsh Government's Memorandum being laid. In addition, the Scottish Government's supplementary legislative consent memorandum was laid on 25 January 2023, six months prior to the Welsh Government laying its Memorandum No. 2 on near identical provisions in relation to Off-Shore Wind amongst other matters.

45. In the Scottish Parliament, the Net Zero, Energy and Transport Committee³⁷ and the Delegated Powers and Law Reform Committee³⁸ were able to seek written submissions from stakeholders, and seek evidence from the relevant Scottish Government Cabinet Secretary and the UK Government Minister in order

³⁶ Scottish Parliament, [Legislative Consent Memorandums, Energy Bill](#)

³⁷ Scottish Parliament, [Net Zero, Energy and Transport Committee](#)

³⁸ Scottish Parliament, [Delegated Powers and Law Reform Committee](#)

to receive further information in relation to delegated powers contained in the Bill.

46. In light of the above, we are very concerned with the decisions taken by the Minister and her department, which raise questions about the wider processes within the Welsh Government regarding the timely laying of legislative consent memoranda.

Conclusion 2. The delay in laying the required legislative consent memoranda in relation to the Bill is not acceptable and has severely undermined the ability of the Senedd and its Members to effectively scrutinise the Bill and its impact in Wales.

Conclusion 3. We are not convinced by the reasons put forward by the Minister for the delays in laying before the Senedd the required legislative consent memoranda for the Bill.

47. We note the Minister's reference to the Senedd having no meaningful opportunity to consider their position on consent. While we agree with that view, we do not believe it is appropriate to make that comment solely in the context of the UK Parliamentary timetable. The lack of opportunity has been caused primarily in our view by the delays to the laying of legislative consent memoranda. It has affected our ability to provide the Senedd with a detailed report to help inform its consideration of the relevant legislative consent motion.

48. We have also not had the opportunity to make representations to the UK Government on the substance of the relevant issues or to raise concerns with counterpart Committees in the UK Parliament. Other relevant Senedd Committees have also not had the opportunity to consult with their stakeholders.

Conclusion 4. The Minister should take responsibility for the delay in laying Welsh Government legislative consent memoranda and the impact this has had in reducing the time available for Senedd scrutiny of complex and important matters within the Senedd's competence.

Conclusion 5. The contradictory chronology of events and explanations about intergovernmental cooperation provided by the Minister and the UK Government is very concerning and suggests, at best, that the parliaments' roles have not been given adequate consideration during government-to-government discussions which have taken place for more than a year.

49. One particular matter of concern to us is that the Minister cited a lack of experienced civil servants in the Welsh Government for dealing with energy-related matters.³⁹ We have repeatedly raised with the Welsh Ministers the matter of resourcing in the Welsh Government specifically in respect of legislating for Wales. Such have been our concerns that we took the unusual step of inviting the Permanent Secretary to the Welsh Government to our meeting on 10 October 2022⁴⁰ and he, along with the Counsel General, discussed with us the Welsh Government's capacity to legislate for Wales. Given the remarks made by the Minister, it would appear that there are issues of capacity within the Welsh Government and potentially expertise in relation to legislative matters. We will no doubt return to the issue of resourcing in the Welsh Government in the coming months.

50. We also note the Minister's comments in the legislative consent memoranda about the "significant costs"⁴¹ which may arise as a result of the Bill's provisions. If time had allowed, such comments by the Minister could have been expected to have been scrutinised by Senedd Committees.

51. In addition, there appears to be a potential overlap between the OWEIP provisions added to the Bill and the Welsh Government's own Infrastructure Bill. We will pursue this issue further with the Minister as part of our scrutiny of the Infrastructure Bill. Again it should be noted that earlier laying of the legislative consent memoranda would have enabled such questions to be asked within the context of scrutiny of the Energy Bill with the aim of potentially influencing the drafting of the Bill should it have been necessary.

52. There are a number of issues which we would like to have considered more fully in our report but that has not proved possible because of the timing constraints.

53. For example, we would like to have addressed the Minister's comments about the devolution settlement as it relates to energy. We would also have liked to consider the Minister's comments on laying multiple legislative consent memoranda on the same Bill. We have said previously that from the perspective of this Committee, which looks at legislative consent memoranda on all UK Bills,

³⁹ LJC Committee, 10 July 2023, RoP [7]

⁴⁰ ~~Legislation, Justice and Constitution Committee~~, 10 October 2022

⁴¹ See, for example, Memorandum No. 2, paragraph 21

delays in laying such memoranda reduces the amount of time we have to scrutinise and understand the Welsh Government's approach to a Bill.⁴²

Conclusion 6. We believe that the Welsh Government must learn lessons from its handling of this Bill to ensure that what has happened does not happen again, and to ensure that the Senedd is presented in a timely manner with the necessary information it requires to perform its democratic role.

Recommendation 1. The Welsh Government should provide to us within 28 days the full details of the internal processes followed by individual Welsh Government departments and collectively by the Welsh Cabinet when liaising with the UK Government on UK Bills which engage Standing Order 29.

Recommendation 2. The Welsh Government should provide to us within three months the outcome of a review of the lessons learned from its handling of the Energy Bill.

⁴² Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Leasehold Reform \(Ground Rent\) Bill](#), December 2021
