

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 5) on the Levelling-up and Regeneration Bill

October 2023



1. Background

The UK Government's Levelling-up and Regeneration Bill

1. The Levelling-up and Regeneration Bill¹ (the Bill) was introduced into the House of Commons on 11 May 2022. It is sponsored by the Department for Levelling Up, Housing and Communities.

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

“make provision for the setting of levelling-up missions and reporting on progress in delivering them; about local democracy; about town and country planning; about Community Infrastructure Levy; about the imposition of Infrastructure Levy; about environmental outcome reports for certain consents and plans; about regeneration; about the compulsory purchase of land; about information and records relating to land, the environment or heritage; for the provision for pavement licences to be permanent; about governance of the Royal Institution of Chartered Surveyors; about vagrancy and begging; and for connected purposes.”

3. At the time of agreeing our report, the Bill had completed its Third Reading in the House of Lords, with the consideration of Lords amendments in the House of Commons scheduled for 17 October 2023.

The Welsh Government's Legislative Consent Memoranda

4. 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.

5. The Committee has reported on previous Welsh Government legislative consent memoranda on the Bill in the following reports, which contain relevant background information on those memoranda:

- The Welsh Government's Legislative Consent Memoranda on the Levelling-up and Regeneration Bill (February 2023)

¹ Levelling-up and Regeneration Bill, as introduced (Bill 6)

- The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Levelling-up and Regeneration Bill (June 2023)
- The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Levelling-up and Regeneration Bill (September 2023)

6. On 6 October 2023, the Minister for Climate Change (the Minister) laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 5) in respect of the Bill.²

7. The Business Committee agreed on 10 October 2023 that the Legislation, Justice and Constitution Committee, the Climate Change, Environment and Infrastructure Committee and the Economy, Trade and Rural Affairs Committee should report on the Memorandum by 16 October 2023.³

The Welsh Government's Memorandum No. 5

8. In Memorandum No. 5 the Minister states:

*"On 28 September 2023 the UK Government tabled amendments for consideration at House of Lords Final Stages. These amendments concern Part 6 (Environmental Outcomes Reports). These amendments affect provisions contained within the Bill as introduced that fall within the legislative competence of the Senedd."*⁴

9. Following completion of proceedings in the House of Lords, the Bill is returning to the House of Commons for consideration of Lords Amendments. Memorandum No. 5 refers to two motions in lieu of Lords Amendments tabled by the UK Government.⁵

10. The first motion is to move an amendment to the Bill in lieu of Lords Amendment 90.⁶ It relates to the regulation-making powers that the Welsh

² Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 5) Levelling-up and Regeneration Bill, October 2023

³ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 5 on the Levelling-up and Regeneration Bill), October 2023

⁴ Memorandum No. 5, paragraph 12

⁵ Memorandum No. 5, paragraphs 16 and 20

⁶ See Bill 369 (Lords Amendments) and Levelling-up and Regeneration Bill Consideration of Lords amendments

Ministers are being given under the Bill in relation to Environmental Outcomes Reports (EOR).

11. Under the Bill as previously amended, the Welsh Ministers were required to have regard to the Environmental Improvement Plan when exercising such regulation-making powers. That plan is a UK Government plan which applies in relation to England only.⁷ Memorandum No 5. states that this had been discussed previously between UK Government and Welsh Government officials and it was proposed that the Welsh Ministers would instead need to consider the national natural resources plan (required by section 9 of the *Environment (Wales) Act 2016*) when making EOR regulations.

12. However, due to an oversight, this provision was not inserted at the previous amendment stage. The amendment proposed therefore seeks to rectify this position so that the Welsh Ministers will have to have regard to the national natural resources plan when making EOR regulations.⁸

13. The second motion is to move an amendment to the Bill in lieu of Lords Amendment 285.⁹ The proposed amendment relates to the commencement of a particular provision in the Bill.¹⁰

14. The provision in question¹¹ amends Schedule 7B to the *Government of Wales Act 2006* (the 2006 Act) so that the Levelling-up and Regeneration Act, as it will be known, is added to the list of enactments in paragraphs 9(8)(b) and 11(6)(b). Memorandum No. 5 explains that the effect of this provision is that in the future, the Senedd can alter concurrent regulation-making powers in relation to planning and EORs without the consent of the UK Government.

15. However, previously under the Bill, the provision to amend the 2006 Act was to be brought into force on a day appointed by the Secretary of State by regulations. The Welsh Government state they did not consider this to be acceptable but that, following discussions, the UK Government agreed to table

⁷ In its report on Memorandum No. 4, the Climate Change, Environment and Infrastructure drew attention to this issue, recommending that the Minister for Climate Change explains the position adopted in the Bill (as amended at Report Stage in the House of Lords).

⁸ Memorandum No. 5, paragraphs 13 to 16

⁹ See Bill 369 (Lords Amendments) and Levelling-up and Regeneration Bill Consideration of Lords amendments

¹⁰ See discussion on Amendment 271 in Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.4) The Levelling Up And Regeneration Bill. 16 August 2023, paragraph 75

¹¹ Clause 245 of HL Bill 173. (as amended on Report)

the amendment. If the amendment is agreed to, the provision will now come into force two months after the Bill has received Royal Assent.¹²

The Welsh Government's position

16. The Minister states in Memorandum No. 5:

"In SLCM 4 I identified that the provisions in respect of environmental outcomes reports are beneficial, and I was in support of their application to Wales.

The amendments made here mean that the legislative framework for making EOR regulations is specific to Wales and the commencement amendments ensure our devolution settlement is not affected. (...)

I still consider the overall provisions in respect for EOR are appropriate for Wales and these amendments resolve issues in the dra[f]ting that mean I recommend the Senedd consents to this Bill."¹³

2. Committee consideration

17. We considered Memorandum No. 5 at our meeting on 9 October 2023 and agreed our report on 16 October 2023.

Our view

General observations on consent

18. We note the Welsh Government's assessment of amendments tabled to the Bill by the UK Government that are the subject of Memorandum No. 5.

19. We also note that while the amendments relate to Part 6 of the Bill, they are also relevant to Parts 3, 12 and 13.

Conclusion 1. We agree that the amendments set out in Memorandum No. 5 relate to provisions in the Bill that fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29; therefore, should

¹² Memorandum No. 5, paragraphs 17 to 20

¹³ Memorandum No. 5, paragraphs 21, 22 and 25

the amendments be agreed to, the amended provisions will require the consent of the Senedd.

20. Notwithstanding the concerns we have expressed in our previous reports about the approach adopted by the Welsh Government in relation to EOR provisions in the Bill, we welcome what the amendments tabled by the UK Government seek to achieve.

21. However, the late tabling of the amendments, coupled with an understanding of the implications should they not have been tabled (or if they are not agreed to) highlight the largely unsatisfactory approach of using UK Bills to legislate in devolved policy areas.