

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) 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 Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)

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.

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

- 5.** On 28 September 2022, the Minister for Climate Change (the Minister) laid before the Senedd a Legislative Consent Memorandum (the initial Memorandum) in respect of the Bill.²
- 6.** The Business Committee agreed that the Legislation, Justice and Constitution Committee, the Climate Change, Environment and Infrastructure Committee, the Economy, Trade and Rural Affairs Committee and the Local Government and Housing Committee should report on the initial Memorandum by 8 December 2022.³
- 7.** On 25 November 2022, the Minister laid a revised Legislative Consent Memorandum (the revised Memorandum) before the Senedd,⁴ following correspondence from the Local Government and Housing Committee⁵ and this Committee.⁶
- 8.** The Business Committee agreed a new reporting deadline for the revised Memorandum of 16 February 2023.⁷
- 9.** Following amendments tabled to the Bill by the UK Government during Report Stage in the House of Commons, the Welsh Government laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) reflecting these amendments on 30 November 2022.⁸
- 10.** The Business Committee agreed that Memorandum No. 2 should be reported on by 16 February 2023.⁹
- 11.** Our report on the revised Memorandum and Memorandum No. 2 (the original report) was published on 24 February 2023.¹⁰

² Welsh Government, [Legislative Consent Memorandum, Levelling-up and Regeneration Bill](#), September 2022

³ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Levelling-up and Regeneration Bill](#), October 2022

⁴ Welsh Government, [Revised Legislative Consent Memorandum, Levelling-up and Regeneration Bill](#), November 2022

⁵ [Letter from the Chair, Local Government and Housing Committee to the Minister for Climate Change](#), 1 November 2022

⁶ [Letter to the Minister for Climate Change](#), 2 November 2022

⁷ Business Committee, [Revised timetable for consideration: Legislative Consent Memorandum on the Levelling-up and Regeneration Bill](#), November 2022

⁸ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), The Levelling-up and Regeneration Bill](#), 30 November 2022

⁹ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 2\) on the Levelling-up and Regeneration Bill](#), December 2022

¹⁰ Legislation, Justice and Constitution (LJC) Committee, [The Welsh Government's Legislative Consent Memoranda on the Levelling-up and Regeneration Bill](#), February 2023

12. The Minister responded to our report on 25 April 2023.¹¹

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

13. The Minister laid a further Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of the Bill on 27 April 2023.¹²

14. Memorandum No. 3 related to amendments tabled to the Bill by the UK Government on 13 March 2023 and considered at Committee Stage in the House of Lords.

15. The Business Committee agreed that Memorandum No. 3 should be reported on by 22 May 2023,¹³ before granting extensions to 5 June 2023¹⁴ and then 12 June 2023.¹⁵

16. Our report on Memorandum No. 3 was published on 9 June 2023.¹⁶

17. The Minister responded to our report on 27 June 2023.¹⁷

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4)

18. The Minister laid a further Supplementary Legislative Memorandum (Memorandum No. 4) in respect of the Bill on 16 August 2023.¹⁸

19. Memorandum No. 4 concerns some 63 amendments to the Bill tabled by the UK Government for consideration at Report Stage in the House of Lords.

¹¹ Letter from the Minister for Climate Change, 25 April 2023

¹² Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\), Levelling-up and Regeneration Bill](#), April 2023

¹³ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Levelling-up and Regeneration Bill](#), April 2023

¹⁴ Business Committee, [Revised timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Levelling-up and Regeneration Bill](#), May 2023

¹⁵ Business Committee, [Revised timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Levelling-up and Regeneration Bill](#), May 2023

¹⁶ LJC Committee, [The Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Levelling-up and Regeneration Bill](#), June 2023

¹⁷ Letter from the Minister for Climate Change, 27 June 2023

¹⁸ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 4\), Levelling-up and Regeneration Bill](#), August 2023 (Date the document was laid in the Table Office).

20. The Business Committee agreed that Memorandum No. 4 should be reported on by 13 October 2023.¹⁹

Provisions for which the Senedd's consent is required

21. References to the provisions in the Bill are to the version as at 24 May 2023²⁰ to reflect the numbering used in Memorandum No. 4, unless otherwise stated.

22. The Memorandum identifies the following amendments which the Welsh Government considers require the consent of the Senedd, namely:

- Part 1 (Levelling up Missions) – insertion of a new clause²¹ and amendments to clause 2 and clauses 4 to 6;
- Part 3, Chapter 1 (Planning Data) – amendments to clauses 79, 84 and 85, as well as the insertion of a new clause;
- Part 6 (Environmental Outcomes Reports) – amendments to clauses 143, 147 and 148, clauses 152 to 154, clause 157, as well as the insertion of a new clause;
- Part 12 (Miscellaneous) – the insertion of a new clause;
- Part 13 (General) - amendments to clause 231 and clauses 233 and 234;
- The insertion of 3 new Schedules related to planning data, environmental assessment legislation and environmental outcomes reports (EOR).

23. The amendments were agreed to by the House of Lords during Report stage proceedings in July and September 2023.²²

24. Memorandum No. 4 states that the UK Government's view is that legislative consent is not required for clauses in Part 1 of the Bill.²³ It does not state whether the UK Government is of the view that the other clauses and Schedules as amended or inserted by the amendments set out in Memorandum No. 4 require the consent of the Senedd.

¹⁹ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 4\) on the Levelling-up and Regeneration Bill](#), September 2023

²⁰ [Levelling-up and Regeneration Bill, as amended in Committee](#) (HL Bill 142)

²¹ Amendment 9 inserts a new clause (rather than amends clause 1 as could be interpreted from the wording in Memorandum No. 4)

²² [Levelling-up and Regeneration Bill, Report stage: Lords Hansard and minutes of proceedings](#)

²³ Memorandum No. 4, paragraph 22

The Welsh Government's position

25. In Memorandum No. 4 the Minister outlines the background to the Bill's introduction and handling by the UK Government,²⁴ noting in particular that:

*"The Welsh Government was not consulted on the development of the Bill, nor was it consulted on the draft Levelling Up Missions which form the basis of Part 1, and which are contained in the Levelling Up White Paper (February 2022)."*²⁵

26. The Minister states that:

"I am content that the amendments tabled by the UK Government on 4 July 2023 improve upon the position set out in the original revised LCM laid on this Bill on 25 November 2022.

*Amendment 9 places a duty on a Minister of the Crown when setting objectives which His Majesty's Government intends to pursue to reduce geographical disparities in the United Kingdom (which will be contained in a statement of levelling-up missions) to (a) have regard to any role of the Welsh Government and Senedd Cymru, and (b) carry out consultation with Welsh Government (as the Minister considers appropriate)."*²⁶

27. However, the Minister also outlines concerns with Part 1 of the Bill,²⁷ including:

- that the Senedd could pass equivalent legislation;²⁸
- the effect of the levelling-up missions on how funds supporting the levelling-up agenda are spent;²⁹

²⁴ Memorandum No. 4, paragraphs 9 to 14

²⁵ Memorandum No. 4, paragraph 11

²⁶ Memorandum No. 4, paragraphs 95 to 96

²⁷ Memorandum No. 4, paragraphs 93 to 94 and 97 to 103

²⁸ Memorandum No. 4, paragraphs 93 and 102 to 103

²⁹ Memorandum No. 4, paragraph 97

- that the levelling-up missions and associated metrics have been developed without consultation with the Welsh Government;³⁰
- how the UK Government will discharge its duties as set out in amendment 9.³¹

28. The Minister also notes on levelling-up missions:

“We would expect to utilise the inter-governmental arrangements for Welsh Ministers to be engaged in this agenda. Similarly, Welsh Ministers continue to seek a co-decision-making role on agreeing the outcomes and how funds supporting the Levelling Up agenda – including the Shared Prosperity Fund (the replacement to EU funds) – should be spent; this helps to ensure policy coherence and avoid duplication.”³²

29. As regards other provisions in the Bill relating to planning and EOR, the Minister notes:

“In previous LCMs I identified that the provisions in respect of planning data provisions and environmental outcome reports are potentially beneficial, and I was open to persuasion on their application to Wales.”³³

30. The Minister also states:

“In my revised LCM tabled in November I indicated the potential benefits of moving to an EOR approach for environmental assessment. At that time the Bill proposed EOR regulation making powers for the Secretary of State in devolved areas subject only to consultation with the Welsh Ministers. The above tabled amendments would prevent the Secretary of State from making regulations in devolved areas without the consent of the Welsh Ministers.

The amendments across Parts 3, 6, 12, 13 and related Schedules also provide the Welsh Ministers with regulation making

³⁰ Memorandum No. 4, paragraph 98

³¹ Memorandum No. 4, paragraph 111

³² Memorandum No. 4, paragraph 111

³³ Memorandum No. 4, paragraph 112

powers for EOR thereby restoring a means to replace environmental impact assessment (EIA) and strategic environmental assessment (SEA) regulations should this be necessary, either through policy improvements agreed with stakeholders in Wales or made necessary by changes made to reserved consent regimes by the UK Government. (...)

While the Secretary of State would have regulation making powers in devolved areas, the requirement of prior consent from the Welsh Ministers, along with the relevant amendments to Schedule 7B of the Government of Wales Act 2006, provide safeguards to their use. I consider this concession and the benefits from Welsh Ministers having regulation making powers sufficient for me to recommend the Senedd grant consent."³⁴

31. The Minister concludes by saying that she therefore recommends that the Senedd consents to the Bill.³⁵

The Welsh Government's Written Statement Laid Under Standing Order 30

32. The Welsh Government laid a statement on 16 August 2023 under Standing Order 30 noting that provisions within the Bill (including as a result of amendment) relating to compulsory purchase will modify the functions of the Welsh Ministers that are outside of devolved competence and therefore are not subject to the legislative consent process under Standing Order 29.³⁶

2. Committee Consideration

33. We considered Memorandum No. 4 at our meeting on 18 September 2023. We agreed our report on 2 October 2023.

34. References in conclusions and recommendations to the provisions in the Bill are to the version as at 24 May 2023 (HL Bill 142) to reflect the numbering used in Memorandum No. 4, unless otherwise stated.

³⁴ Memorandum No. 4, paragraphs 104, 105 and 108

³⁵ Memorandum No. 4, paragraph 114

³⁶ Welsh Government, [Written Statement: Levelling-up and Regeneration Bill – Compulsory Purchase Amendments – Hope Value and Compensation](#), 16 August 2023

Our view

General observations on consent

35. We note the Welsh Government's assessment of amendments made to the Bill that are the subject of Memorandum No. 4.

36. We consider that amendments 175, 176, 177 and 178 to clause 84³⁷ have likely been included in Memorandum No. 4 in error because they concern Northern Ireland.

Recommendation 1. The Minister should confirm whether amendments 175, 176, 177 and 178 as they apply to clause 84 of the Bill require the consent of the Senedd.

37. In our original report we noted the Minister's view that consent should be withheld for clause 191 (as introduced; clause 230 of HL Bill 142) "due to the lack of equivalent powers for the Welsh Ministers to make regulations in respect of devolved matters." We stated:

*"We note and share the concerns of the Minister regarding clause 191 of the Bill. We are concerned that it permits the amendment of an Act or Measure of Senedd Cymru, without any role for the Senedd. We do not consider this to be acceptable. This is the majority view of the Committee."*³⁸

38. Clause 231 of the Bill concerns the power to make regulations including regulations under clause 230. In the Bill as introduced it was clause 192; however it has not featured in any memoranda until Memorandum No. 4. Memorandum No 4 states that amendments 288, 291, 294 and 298 remove the reference to regulations under Part 6 and Chapter 1 of Part 3 in clause 231 because the rules governing such regulations are to be set out in a new Schedule to the Bill.³⁹

Recommendation 2. The Minister should explain why she has changed her position and is now recommending that the Senedd provides its consent for clause 230 of the Bill (clause 191 as introduced).

Recommendation 3. The Minister should explain:

³⁷ Memorandum No. 4, paragraph 34

³⁸ LJC Committee, The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Levelling-up and Regeneration Bill, June 2023, paragraph 67

³⁹ Memorandum No. 4, paragraph 76

- whether clause 231 of the Bill (clause 192 as introduced) requires the consent of the Senedd;
- why clause 231, as amended by amendments 288, 291, 294 and 298, requires the consent of the Senedd.
- why she is recommending that the Senedd consents to clause 231.

Conclusion 1. A majority of the Committee agree that Part 1 of the Bill, following the amendments set out in Memorandum No. 4, 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.

Conclusion 2. Subject to recommendations 1 to 3, we agree that Chapter 1 of Part 3 and Parts 6, 12 and 13 of the Bill, following the amendments set out in Memorandum No. 4, 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.

Part 1 of the Bill

39. In our original report, we stated:

“A majority of the Committee consider that the approach being proposed by the UK Government could potentially blur the boundaries of devolution causing unnecessary confusion for the public. It could also lead to policies adopted in devolved areas by different governments being in conflict, with the result that resources are used inefficiently and for competing priorities. In this regard we note the comments of the Minister highlighting that the Well-being of Future Generations (Wales) Act 2015 already provides for some of the provisions which appear in clauses 1 to 6 of the Bill.”⁴⁰

40. Our original report also said:

“In addition, the Minister notes that the Well-being of Future Generations (Wales) Act 2015 already provides for some of the provisions in clauses 1 to 6 of the Bill, including for annual

⁴⁰ LJC Committee, The Welsh Government's Legislative Consent Memoranda on the Levelling-up and Regeneration Bill, February 2023, paragraph 53

reporting, indicators and milestones, and the setting of objectives to shape delivery. The Minister concludes:

*"It is not for UK Government Ministers to set targets for these matters in Wales, nor to report on achieving these to the UK Parliament. I do not recommend the Senedd consents to these provisions and cannot support Part 1 of the Bill."*⁴¹

41. In a Written Statement on 20 June 2023, following the fourth meeting of the Inter-Ministerial Standing Committee (on 17 May 2023), the Counsel General and Minister for the Constitution, Mick Antoniw MS, reported that he had told attendees at the meeting that, while willing to work on Part 6 of the Bill:

*"...the provision for the setting of levelling-up missions, associated metrics and targets and reporting on progress in Part 1 of that Bill represents an inappropriate intrusion into the legislative competence of the Senedd."*⁴²

42. We note that following amendments to Part 1 of the Bill, the Welsh Government is now seeking consent for that Part. This is despite the fact that the Minister still has concerns with Part 1 of the Bill and her emphasis that:

*"The Welsh Government is still of the view that the Senedd could pass equivalent provisions to those contained within Part 1 and place on Welsh Ministers identical obligations to set out how they propose to "reduce geographical disparities" in economic, social, or other opportunities across Wales; supported by annual reporting and progress methodology, metrics or target dates."*⁴³

43. In relation to planning data and EOR provisions contained in Parts 3 and 6 of the Bill, the Minister has explained she was "open to persuasion on their application to Wales". However, we are not aware of the Minister advising us that she was open to persuasion on the application of Part 1 of the Bill to Wales.

⁴¹ LJC Committee, The Welsh Government's Legislative Consent Memoranda on the Levelling-up and Regeneration Bill, February 2023, paragraph 20

⁴² Welsh Government, ~~Written Statement, Inter-Ministerial Standing Committee~~, 20 June 2023

⁴³ Memorandum No. 4, paragraph 93. See also: Memorandum No. 4 paragraphs 102, 103 and 111; Welsh Government, Revised Legislative Consent Memorandum, Levelling-up and Regeneration Bill, November 2022, paragraphs 47 and 76

44. Memorandum No. 4 only includes a brief reference to discussions that took place on 3 July 2023 between the Minister and the UK Minister for Levelling Up, but it remains unclear whether this involved discussion on Part 1 of the Bill.⁴⁴ We note, however, that amendments for which consent is being sought in relation to Part 1 were laid on 4, 5 and 6 July 2023 and subsequently debated and agreed on 11 July 2023.⁴⁵

45. We also note the Minister's more general comments in Memorandum No. 4 that:

"...the Welsh Government had no engagement with the UK Government on the development of its Levelling Up White paper, including the 12 missions (Annex A) and associated metrics. Similarly, there was no consultation or engagement on Part 1 of this Bill, nor the requirement for legislative consent. Since introduction I and my officials have engaged with UK Government on our concerns."⁴⁶

46. It is disappointing that the UK Government has not engaged with the Welsh Government on matters of policy. Equally, despite now seeking the Senedd's consent for the Bill, it is also unfortunate that the Welsh Government does not appear to have consulted or engaged with Welsh stakeholders on Part 1 of the Bill, which covers an area of policy vital to communities across Wales.

47. Furthermore, the implications for Welsh Government policy-making is not easily discernible from reading Memorandum No 4. It makes reference to utilising "the inter-governmental arrangements for Welsh Ministers to be engaged in this agenda" and seeking "a co-decision-making role on agreeing the outcomes and how funds supporting the Levelling Up agenda – including the Shared Prosperity Fund (...) should be spent." However, no other information or detail is provided.

48. The approach the Welsh Government has adopted in relation to Part 1 of the Bill has raised a series of questions which, given the time constraints applying to scrutiny of Memorandum No. 4, we have to pursue through the following recommendations.

⁴⁴ Memorandum No. 4, paragraph 14

⁴⁵ Memorandum No. 4, paragraph 24

⁴⁶ Memorandum No. 4, paragraph 94

Recommendation 4. The Minister should explain why the Welsh Government has changed its position and is now recommending that the Senedd consents to Part 1 of the Bill.

Recommendation 5. The Minister should explain how the change in the Welsh Government's position to Part 1 of the Bill came about and when the decision was made to recommend that the Senedd gives its consent, given the Counsel General's Written Statement on 23 June 2023 and the tabling of relevant amendments in early July 2023.

Recommendation 6. The Minister should explain why she did not write to Senedd Committees as soon as her position on Part 1 of the Bill changed, not least given that Memorandum No. 4 was laid during the summer recess period on 16 August 2023, and around a month after the relevant amendments were tabled (and outside the normal requirements of Standing Order 29) in the UK Parliament.

Recommendation 7. The Minister should state whether it is still the Welsh Government's view that Part 1 of the Bill "represents an inappropriate intrusion into the legislative competence of the Senedd".

Recommendation 8. The Minister should state whether, and if so when, she intends to bring forward a Welsh Government Bill covering matters related to Part 1 of the Bill to enable scrutiny by the Senedd and its Committees, as well as engagement with Welsh stakeholders.

Recommendation 9. The Minister should state what discussions she has had with the Secretary of State about the delivery of, and reporting on, each of the levelling-up missions relevant to Wales under Part 1 of the Bill.

Recommendation 10. The Minister should explain:

- the extent to which provisions in the Bill are already provided for in the *Well-being of Future Generations (Wales) Act 2015* and whether any conflict or overlap exists between the two pieces of legislation;
- how the Bill and the 2015 Act will operate alongside each other;
- if there are any implications arising from the Bill for the Welsh Government's obligations under the 2015 Act, given her comments in the revised Memorandum.

Recommendation 11. The Minister should state how the Welsh Government's approach to policy-making on matters related to levelling-up will be changed should the Bill be passed by the UK Parliament and enacted.

Recommendation 12. The Minister should state what inter-governmental arrangements the Welsh Government intends to utilise in order to be engaged in the levelling-up agenda and the implementation of Part 1 of the Bill, and what arrangements she will put in place to ensure the Senedd and its Committees can hold the Welsh Government to account for the decisions it makes.

Recommendation 13. The Minister should state what mechanism she will use to seek a co-decision-making role for agreeing how funds supporting the levelling-up agenda (including the Shared Prosperity Fund) should be spent, and what arrangements she will put in place to ensure the Senedd and its Committees can hold the Welsh Government to account for the decisions it makes.

Recommendation 14. The Minister should report to the Senedd before 12 December 2023 on the outcome of her discussions with the UK Government in relation to recommendations 12 and 13.

49. We note that Memorandum No. 4 states in relation to Part 1 that:

"The Bill (as amended) will require the relevant Minister of the Crown to lay before each House of Parliament the first statement of levelling-up missions within 30 days of this section coming into force. Amendment 9 requires consultation with the Welsh Government which would need to happen within this period."⁴⁷

Recommendation 15. The Minister should make a statement to the Senedd setting out the outcome of the consultation now required by Part 1 of the Bill and make appropriate arrangements to ensure that the UK Government's first statement of levelling-up missions is brought to the attention of the Senedd within 7 days of it being laid in the UK Parliament.

⁴⁷ Memorandum No. 4, paragraph 99

Other Parts of the Bill

50. As we indicate earlier in our report, the Minister told us that, in relation to planning data and EOR provisions contained in Parts 3 and 6 of the Bill, she was “open to persuasion on their application to Wales”.

51. In Memorandum No. 4 the Minister explains that she has secured executive powers for the Welsh Ministers in relation to these matters.

52. On the Bill's introduction, the planning data and EOR provisions were drafted as regulation-making powers for the Secretary of State only, subject to prior consultation with the Welsh Ministers where the regulations contained provision within devolved competence.

53. The effect of the amendments to Parts 3 and 6 is that for matters within the legislative competence of the Senedd, the Secretary of State and the Welsh Ministers can make regulations on planning data and EOR, alone or jointly, but the Secretary of State will be required to obtain the Welsh Ministers consent before making such regulations (except in certain circumstances). These are therefore concurrent plus powers.⁴⁸

54. We also note that, in securing these powers, the Minister states that “safeguards” for their use are provided by the requirement for the consent of the Welsh Ministers before the power is exercised by the Secretary of State, and the inclusion of a carve out to enable the removal of the concurrent powers.

55. In our report on Memorandum No. 3 we stated:

“As we indicated in our original report, we are concerned that providing executive powers for the Welsh Ministers in a UK Bill through amendments at the end of the law-making process in the UK Parliament offers little chance of scrutiny by the Senedd through the legislative consent process.”⁴⁹

56. That concern has therefore been realised. The UK Parliament, rather than the Senedd, will be responsible for delegating powers to the Welsh Ministers and deciding the scrutiny procedures that should apply to regulations laid before the Senedd by the Welsh Ministers. The Senedd's scrutiny function has

⁴⁸ See [Letter from the Minister for Climate Change](#), 6 August 2021, including Guidance for Welsh Government officials on concurrent powers. (References in this report to concurrent powers includes references to concurrent plus powers).

⁴⁹ LJC Committee, The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Levelling-up and Regeneration Bill, June 2023, paragraph 36

disappointingly once again been bypassed to be replaced by a “take or leave it” vote on a legislative consent motion. We do not believe that the “safeguards” secured by the Minister are an adequate substitute for the scrutiny and law-making function of the Senedd.

57. In addition, Memorandum No. 4 does not contain detailed information about what the powers being delegated to the Welsh Ministers will enable them to do. Nor does Memorandum No. 4 provide information about the scope of those powers.

58. Again, the approach the Welsh Government has adopted on these provisions raises a series of questions which, given the time constraints applying to scrutiny of Memorandum No. 4, we have to pursue through the following recommendations.

Recommendation 16. The Minister should explain:

- why she has agreed to the Secretary of State having powers to make regulations in relation to planning data and environmental outcomes reports, in areas of devolved competence;
- the circumstances under which she would consent to the Secretary of State making regulations in relation to planning data and environmental outcomes reports, thereby denying the Senedd the ability to fully scrutinise such regulations under its Standing Orders.

Recommendation 17. The Minister should clarify exactly how her concerns about clause 155(2) (clause 128(2) of the Bill as introduced), regarding the omitting of section 71A of the *Town and Country Planning Act 1990* have been resolved as a consequence of the amendments to the Bill.⁵⁰

Recommendation 18. The Minister should provide a detailed analysis of the regulation-making powers provided to the Welsh Ministers by the Bill including:

- the scope of each power;
- a statement of policy intent for each power;
- when she intends to exercise each power.

⁵⁰ See Letter from the Minister for Climate Change, 27 June 2023, Response to recommendation 4.

Recommendation 19. The Minister should explain how her agreement to include concurrent powers in the Bill is consistent with principles that Ministers have agreed in Cabinet in relation to such powers, as set out in her letter to us of 6 August 2021.⁵¹

Recommendation 20. The Minister should state whether she intends to bring forward, before the end of the Sixth Senedd, a Welsh Government Bill that will include provisions replicating those in the Bill relating to planning data and environmental outcomes reports to allow full Senedd scrutiny and to enable the making of bilingual, accessible Welsh law.

Recommendation 21. The Minister should state when she expects the first opportunity to arise such that all concurrent powers in the Bill will be removed in accordance with principles agreed in Cabinet by Ministers.

The scrutiny of the legislative consent memoranda

59. The scrutiny of the legislative consent memoranda has been hampered by an original memorandum that needed to be revised because of a lack of appropriate detail, the lack of timely information, and significant changes to the Bill in devolved areas at the end of the UK parliamentary process.

60. The Bill has been subject to significant amendment and as a result it has not been easy to track how clause numbers have changed between versions of the Bill in the UK Parliament.

61. We have concluded previously that all legislative consent memoranda should, as a matter of routine, include information (for example in table format⁵²) tracking any changes to the clause numbers in a UK Bill as a result of amendments made during its passage through the UK Parliament.⁵³ We have also concluded that where the Welsh Government either chooses, or accepts an offer from the UK Government, to use a UK Bill to legislate in a devolved area it is imperative that any legislative consent memorandum in respect of any such Bill

⁵¹ See also the reference to the Cabinet principles in the Letter from the Minister for Climate Change, 25 April 2023

⁵² The Welsh Government has adopted this approach previously; see for example, [Supplementary Legislative Consent Memorandum \(Memorandum Number 5\) Police, Crime, Sentencing And Courts Bill](#), 28 February 2022, Annex A - Comparison table between the original and new version of the Bill 18 January 2022

⁵³ LJC Committee, [The Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 6\) on the Procurement Bill](#), July 2023, paragraph 17, conclusion 2

contains full and detailed information to enable Members of the Senedd to make informed decisions on legislative consent motions.⁵⁴

62. We are disappointed that Memorandum No 4 did not include information about changes to clause numbers in the Bill to facilitate scrutiny. Given the significant changes to the Bill, we are also disappointed at the lack of detailed information and accompanying narrative explaining the effect in policy terms of what the amendments, agreed by the Welsh Government, would mean in practice. We do not believe that Memorandum No. 4 has reached a satisfactory standard.

63. If the Welsh Government is going to recommend that the Senedd gives its consent for a UK Bill to make provision in a devolved area it must at the very least be prepared to provide detailed and timely information, particularly in relation to the delegated powers it is seeking. It should also provide adequate justification for its approach and to expect rigorous challenge where it does not.

64. Given the points we raise in this report, we make the following recommendation.

Recommendation 22. The Minister should lay before the Senedd a document explaining the effect in Wales, including on devolved matters, of every section of the Act that applies in Wales within 3 months of the Bill receiving Royal Assent (should it do so).

65. In our report on Memorandum No. 3 we said:

“This report (and others we have written over the course of the last 18 months) highlights how the Senedd is being bypassed in the making of law in devolved areas: proposals are negotiated between the Welsh and UK Governments (without agreement being necessarily reached), with the UK Parliament making the law, potentially without any detailed understanding and knowledge of the policy situation in Wales, or of the extent to which the provisions apply in Wales. This remains an unsatisfactory and, in our view inappropriate, way to make law in devolved areas.”⁵⁵

⁵⁴ LJC Committee, The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 6) on the Procurement Bill, July 2023, paragraph 21, conclusion 3

⁵⁵ LJC Committee, The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Levelling-up and Regeneration Bill, June 2023, paragraph 43

66. Having considered Memorandum No. 4, we reiterate those views.

67. We note that the Bill includes provisions which modify the Welsh Ministers' functions but in a way that is outside the legislative competence of the Senedd and so consent is not required. Instead, for such provisions, Standing Order 30 requires the Welsh Government to lay a written statement before the Senedd and we note the statement laid by the Minister as a result.

Responding to this report

68. In order for the Senedd to be in a position to make an informed decision about whether or not to consent to relevant provisions in the Bill, the Minister will need to ensure that her responses to the recommendations in this report are provided before the debate on the relevant legislative consent motion takes place.

Recommendation 23. The Minister should respond to the recommendations in this report no later than the day before the relevant legislative consent motion takes place, except for those recommendations that provide for an alternative deadline.