

LEGISLATIVE CONSENT MEMORANDUM: WALES BILL

Background

01. The Wales Bill (“the Bill”) was introduced in the House of Commons on 7 June 2016. It completed its committee stage scrutiny in the House of Lords on 23 November.

02. The Welsh Government laid a preliminary Memorandum on the Bill before the National Assembly on 5 July 2016. It summarised the main provisions of the Bill. The preliminary Memorandum concluded:

“There is much work to do on the Bill in the coming weeks and months. The Welsh Government will be arguing for substantive amendments to enhance or protect the Assembly’s existing competence, as well as technical changes to improve the Bill’s coherence and effectiveness.”¹

03. The Welsh Government tabled a Legislative Consent Memorandum in relation to the Wales Bill on 21 November 2016. The Business Committee referred it to the Constitutional and Legislative Affairs Committee (“the Committee”) on 22 November 2016 setting a deadline for reporting of Thursday 12 January 2017.

04. In accordance with Standing Orders 29.1 and 29.2, a Legislative Consent Memorandum is required because provisions in the UK Government’s Wales Bill modify or fall within the National Assembly’s legislative competence.

05. The Legislative Consent Memorandum states that the provisions which modify the National Assembly’s legislative competence include:

- Clause 3 and Schedules 1 and 2: Legislative competence and new Schedules 7A and 7B;
- Clause 4 and Schedule 3: Wales public authorities;
- Clause 9: Super-majority requirement for certain legislation;
- Clause 46: Intervention in case of serious adverse impact on sewerage services etc.²

¹ Preliminary Memorandum, paragraph 34

² Legislative Consent Memorandum, paragraph 53



06. It adds that the provisions which fall wholly or partly within the National Assembly's legislative competence include:

- Clause 6: Timing of Elections;
- Clause 13: Financial control, accounts and audit;
- Clause 29: Transfer of executive functions;
- Clause 49: Provision of information to the Office for Budget Responsibility.³

07. The Legislative Consent Memorandum indicates that the First Minister will lay a Supplementary Memorandum confirming the Welsh Government's position—and whether it should support giving consent to the Bill—when there is clarity on the fiscal framework and any further amendments to the Bill at Report stage in the House of Lords.⁴

Consideration

08. We are content that the matters identified by the Welsh Government are matters that require consent under Standing Order 29.

09. In our [report](#) on the Wales Bill published in October 2016, we expressed concern that the space provided by the Bill to enable the National Assembly to legislate is difficult to delineate and potentially more restrictive than at present. In so doing, we noted the complex way in which the National Assembly's legislative competence is expressed, including the number and extent of reservations and restrictions.

10. As a result, in our report, we recommended possible amendments that we believed would improve the Bill, either suggested by the Presiding Officer or the First Minister or developed by the Committee. These recommendations were based on the evidence of academics and stakeholders with practical day-to-day experience of working with the existing devolution settlement.

11. It is therefore regrettable that none of the substantive issues we identified have been addressed to date.

³ Legislative Consent Memorandum, paragraph 54

⁴ Legislative Consent Memorandum, paragraphs 9 and 57



12. We acknowledge that some positive changes have been made to the Bill, with commitments given to bring forward further amendments at Report Stage in the House of Lords.
13. While welcome, these do not alter the fundamental problems we identified with the Bill that are likely to cause difficulties for the ability of the National Assembly to make coherent, accessible law for citizens in Wales.
14. We remain of the view that as currently drafted the Wales Bill remains complex and impenetrable. It will not deliver the lasting, durable settlement that everyone wishes to see.
15. Despite our reservations on the Bill, we agree with the First Minister that it would be inappropriate to give a view on whether the National Assembly's consent should be provided for the Bill until such time as there is clarity on the fiscal framework and the UK Government has taken a further opportunity through Report Stage to address our concerns. Many of these concerns have been echoed by both the Constitution Committee and the Delegated Powers and Regulatory Reform Committee of the House of Lords, as well as Peers during the Committee Stage scrutiny of the Bill.
16. As a consequence of the timetable for scrutiny of a constitutional Bill being limited, it is regrettable that we may not have an opportunity to scrutinise a supplementary Legislative Consent Memorandum tabled by the Welsh Government. In the event that this situation arises, it will be a matter for the National Assembly to decide on whether to agree consent without a corresponding report from the Committee.

