

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.4)

THE LEVELLING UP AND REGENERATION BILL

1. This legislative consent memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a legislative consent memorandum (LCM) must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Levelling-up and Regeneration Bill (“the Bill”) was introduced in the House of Commons on 11 May 2022. The Bill can be found here [Levelling-up and Regeneration Bill - Parliamentary Bills - UK Parliament](#)
3. I laid an [LCM on the Bill](#) as introduced on 28 September, [a revised LCM on 25 November](#), an [SLCM on 30 November 2022 \(NO.2\)](#) and an [SLCM on 27 April 2023](#).
4. The Levelling-up and Regeneration Bill (“the Bill”), was introduced in the UK Parliament, the House of Commons, on 11 May 2022. The Bill can be found at: <https://bills.parliament.uk/bills/3155> . The Bill as amended in Committee (24 May 2023) can be found at: <https://bills.parliament.uk/bills/3155/publications>
5. On 4 July 2023 the UK Government tabled amendments for consideration at House of Lords Report Stage. These amendments concern Part 1 (Levelling Up Missions) and Part 6 (Environmental Outcome Reports). These amendments affect provisions contained within the Bill as introduced that fall within the legislative competence of the Senedd.
6. I am laying this SLCM during recess as the House of Lords report stage commenced on 11 July and is planned to conclude on 13 September.
7. The tabled amendments can be found at <https://bills.parliament.uk/bills/3155/publications>

Policy Objectives

8. The UK Government’s stated policy objective is to reverse geographical disparities between different parts of the UK by spreading opportunity more equally. Under this, the Bill has four overarching objectives:
 - i. To place a duty on the UK Government to set, and report annually on progress towards achieving, levelling up missions to reduce geographical disparities across the United Kingdom;
 - ii. To create a modern framework to support the most radical devolution of powers in modern times through the creation of a new model of combined county authorities to support delivery of the UK Government’s levelling up mission that ‘by 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement’;

- iii. To deliver a new suite of powers for local authorities to regenerate their towns through high street rental auctions and reforms to compulsory purchase to support delivery of the UK Government's levelling up mission that 'by 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between top performing and other areas closing'; and
- iv. To create a planning system which delivers more beautiful and greener homes, with the associated infrastructure and democratic support that neighbourhoods want and deserve.

Bill introduction and handling

9. The UK Government introduced the Levelling Up and Regeneration Bill in the House of Commons on 11 May 2022. The Bill passed 2nd reading on 8 June 2022, and subsequently passed the committee stage, report stage and then the 3rd reading on 13 December 2022. The Bill entered 1st reading in the House of Lords on 19 December 2022 and passed 2nd reading on 17 January 2023. The House of Lords committee stage commenced on 20 February, with report stage commencing on 11 July 2023.
10. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
11. 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).
12. Following a briefing for officials on the main content of the Bill, the Parliamentary Under Secretary of State for Levelling Up, the Union and Constitution wrote to Welsh Government on 10 May 2022 to inform them the Bill would be introduced.
13. On 21 November 2022 the Minister for Levelling Up wrote to Welsh Government regarding the tabling of several Government amendments to the Levelling Up and Regeneration Bill on 16 and 18 November. I wrote to the Minister outlining the potentially significant impact of the Bill on Wales, and our view that the Senedd could pass equivalent provisions to those contained within Part 1.
14. Following a meeting with the Minister for Levelling Up on 22 March and letter of 27 March 2023, I wrote to the Minister for Levelling Up on 26 April 2023 setting out our position on Part 1 and Part 6 (Environmental Outcome Reports). On 3 July I met with the Minister for Levelling Up to discuss proposed UK Government amendments. The Minister for Levelling Up wrote to me on 4 July to confirm their position, and I replied on 5 July setting out our position on proposed amendments to Part 9 (Compulsory Purchase).

Summary of the Bill

15. A summary of the Bill was provided in the original revised Legislative Consent Memorandum (LCM) laid on 25 November 2022.
16. The Bill as introduced made 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 outcomes 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.

17. Further information about the Bill can be found within the first LCM laid <https://senedd.wales/media/5gdfx1u1/lcm-ld15356-e.pdf>

Update on position since the publication of the first and revised Legislative Consent Memorandum

18. I laid an LCM on 28 September 2022, based on the Bill as introduced into the UK Parliament (House of Commons) on 11 May 2022. That LCM stated it was the view of the Welsh Government that it is not appropriate to deal with the majority of the provisions, as drafted on introduction, in this UK Bill. The LCM also identified certain areas the Welsh Government considered could be supported and areas we considered could be supported subject to amendments.
19. The Local Government and Housing Committee (LGHC) and the Legislation, Justice and Constitution Committee (LJCC) in their letters to me of 1 and 2 November respectively, sought further information and clarification on a number of areas in relation to the Bill and the Welsh Government's position. The LJCC suggested an LCM be laid to address the comments it had raised. [A revised LCM was laid to address these points on 25 November](#). The revised LCM was based on the Bill as introduced.
20. A Supplementary Legislative Consent Memorandum ([SLCM](#)) (No.2) was laid on 30 November 2022 to deal with amendments made by the UK Government that were laid at Commons report stage. The Legislation, Justice and Constitution Committee laid its [report](#) on the LCM for the Levelling-up and Regeneration Bill on 24 February 2023 and requested a response from me. That response was issued on 25 April.
21. A [SLCM](#) (No.3) was laid on 27 April 2023 to deal with amendments made by the UK Government at Lords Committee stage. The Legislation, Justice and Constitution Committee laid its [report](#) on the SLCM (PDF 234KB) on 9 June 2023. The Welsh Government [responded](#) to the report on 27 June 2023.

Amendments tabled to the Bill for consideration at House of Lords Report Stage for which consent is required.

PART 1 - Levelling Up Missions

22. The UK Government's view is that a legislative consent is not required for Part 1 (Levelling Up Missions) of the Bill.
23. It is the Welsh Government's view that the Senedd could pass equivalent provisions to those contained within Part 1 and therefore it is our view that Part 1 of the Bill would require the consent of the Senedd.

24. Amendments were tabled on 4, 5 and 6 July to Part 1 (Levelling Up Missions) of the Bill for consideration at House of Lords Report stage. See [HL Bill 142—](#)[\(parliament.uk\)](#). These were [debated](#) on 11 July 2023 and the following Government amendments were agreed.

25. Clause 1 – Statement of levelling-up missions.

Amendment 9

Member's explanatory statement

This amendment requires a Minister of the Crown to have regard to the role of devolved legislatures and devolved authorities, and to consult devolved authorities, in preparing statements of levelling-up missions which sets out objectives which His Majesty's Government intends to pursue to reduce geographical disparities in the United Kingdom within a period specified in the statement. It also requires a Minister to report to Parliament on how they have so had regard.

26. Clause 2 (Annual etc reports on delivery of levelling-up missions)

Amendment 13

Member's explanatory statement

This amendment requires a Minister to consult the devolved authorities in the course of preparing a report on the delivery of the levelling-up missions.

27. Clause 4 (Changes to mission progress methodology and metrics or target dates)

Amendment 15

Member's explanatory statement

This amendment requires a Minister, before making a revision to mission progress methodology and metrics or a target date, to have regard to any role of the devolved legislatures or devolved authorities in connection with the mission to which the revision relates and to consult the devolved authorities.

28. Clause 5 (Reviews of statements of levelling-up missions)

Amendment 16

Member's explanatory statement

This amendment requires a Minister, in the course of carrying out a review under clause 5, to have regard to the role of the devolved legislatures and devolved authorities in connection with the levelling-up missions and to consult the devolved authorities.

29. Clause 6 (Interpretation of Part 1)

Amendment 21

This amendment defines the devolved authorities and devolved legislatures for the purposes of Part 1.

Amendment 23

This amendment makes it clear that references to His Majesty's Government in Part 1 are to His Majesty's Government in the United Kingdom

PART 3 – Chapter 1 – Planning Data

30. Amendments were tabled on 7 July and are yet to be debated.

Clause 79 – Power in relation to the processing of planning data

Amendments 165, 166, and 167

31. As introduced, clause 79(1) gave the Secretary of State a power under Chapter 1 of Part 3 to make planning data regulations that require a planning authority to comply with approved data standards. Amendment 165 replaces “Secretary of State in clause 79(1) with “an appropriate authority” so providing the Welsh Ministers (as an “appropriate authority”) with regulation making powers to require a relevant planning authority, in processing its planning data, to comply with any “approved data standards” which are applicable and as so described in regulations.
32. Clause 79(3) as introduced, confirmed that “approved data standards” could only be published by the Secretary of State. Amendment 166 removes the reference to Secretary of State and extends it to an appropriate authority which includes the Welsh Ministers/devolved authorities.
33. Amendment 167 inserts a new subsection (4) to clause 79 which limits the power of the Welsh Ministers/devolved authorities to publish “approved data standards” to standards that relate to planning data about which the devolved authority could make planning data regulations, i.e., limited to within Welsh legislative competence.

Clause 84 – Requirements to consult devolved administrations

Amendments 171, 172, 173, 174, 175 176, 177 and 178

34. All of these amendments relate to clause 84. As introduced, clause 84(3) provided the Secretary of State with a power to make planning data regulations which contain provision within “*Welsh devolved competence after consulting the Welsh Ministers*”.
35. The planning data provisions of clause 84 support the delivery of Environmental Outcome Reports (EORs). Collectively, amendments 171, 172, 173, and 174 mirror the amendments that have been made to clause 148 (EOR regulations) and their effect is also the same. The detailed effect of these amendments can be found in the commentary for clause 148 below. In summary, for matters that are within the legislative competence of the Senedd, the Secretary of State and the Welsh Ministers can both make Planning Data regulations, alone or jointly, but the Secretary of State will be required to obtain the Welsh Ministers’ prior consent.

New Clause after Clause 84

Amendment 179

36. Similar in effect to amendment 125 to EORs detailed below, amendment 179 inserts a new clause after clause 84 entitled “*Planning data regulations: devolved authorities*”. This clause introduces the new Schedule (Regulations under Chapter 1

of Part 3 or Part 6: restrictions on devolved authorities) which contains restrictions on the exercise of the powers under Chapter 1 of Part 3 by a devolved authority, including the Welsh Ministers. The Schedule is reviewed in detail at paragraph 79 onwards below.

Clause 85 – Interpretation of Chapter

Amendment 180, 181

37. Amendments 180 and 181 insert the definitions of “an appropriate authority” and a “devolved authority” into clause 85 (Interpretation) and have the same meaning as set out above.

PART 6 - Environmental Outcome Reports

Clause 143 – Power to specify environmental outcomes

Amendment 99

38. On introduction, clause 143 provided for a Secretary of State regulation making power to make provision for the whole of the UK in relation to EOR, with only a consultation requirement with the Welsh Ministers prior to using the power.
39. Amendment 99 amends clause 143 to remove “*the Secretary of State*” and insert “*an appropriate authority*” in its place. “*An appropriate authority*” is defined in clause 157 – “Interpretation of Part 6” (see amendments to clause 157 below).

Amendment 103

40. As introduced, clause 143(5) provided that before making any EOR regulations which contain provision about what the specified environmental outcomes are to be, the Secretary of State must have regard to the current environment improvement plan (within the meaning of Part 1 of the Environment Act 2021).
41. Amendment 103 is consequential to amendment 99 as detailed above and amends clause 143(5). Clause 143(5) states that before making an EOR regulations which contain provision about what the specified environmental outcomes are to be, the Secretary of State must have regard to the current environment improvement plan (within the meaning of Part 1 of the Environment Act 2021). Amendment 103 replaces “*the Secretary of State*” and inserts “*an appropriate authority*” in its place, so that all appropriate authorities must now have regard to the current environment improvement plan, including the Welsh Ministers.

Clause 147 – Safeguards: non-regression, international obligations and public engagement

Amendment 105

42. As introduced, the purpose of clause 147 is to implement international obligations and provides for safeguards from non-regression from existing environmental law standards to comply with international agreements.
43. Amendment 105 amends clause 147(1) to replace “Secretary of State with “an appropriate authority”. The effect of the amendment means that the Welsh Ministers are also bound by the safeguards and obligations set out within the clause. These include being satisfied that the making of EOR regulations will not result in environmental law providing an overall level of environmental protection that is less

than that provided currently, and seeking to ensure that the public is informed of any proposed relevant consent or relevant plan in sufficient detail and at an early stage.

Amendment 108

44. This amendment revises clause 147(2) to provide that the requirement for public engagement before exercising functions under this Part will apply to “an appropriate authority” and not only to the “Secretary of State” as drafted in the Bill on introduction, therefore extending this requirement to all devolved authorities and therefore the Welsh Ministers.

Amendment 109

45. As introduced, clause 147(4) defines “adequate public engagement” as being such engagement with the public, in relation to a proposed relevant consent or proposed plan, as the Secretary of State considers appropriate. This amendment is consequential to amendment 105 and replaces “Secretary of State” with “an appropriate authority” in clause 147(4).

Amendment 110

46. Amendment 110 amends the definition of “environmental law” in clause 147(4) for the purposes of the section and now provides that the definition of “environmental law” includes devolved legislation.

Clause 148 – Requirements to consult devolved administrations

Amendments 114, 116, 117 and 118

47. As introduced, clause 148(3) provides that the Secretary of State may not make provision within Welsh devolved competence before consulting the Welsh Ministers and clause 148(4) defined when a “provision is within Welsh devolved competence”.
48. Amendments 114, 116, 117 and 118 introduce a split in requirements within the definition of ‘Welsh devolved competence’. Where EOR regulations made by the Secretary of State include provision within the legislative competence of the Senedd, this could only be done with the consent of the Welsh Ministers, unless that provision is merely incidental to, or consequential on, provision that would be outside that devolved legislative competence.
49. There is then a requirement to consult the Welsh Ministers before any regulations are made that include provision which confer a function on, or modifies or removes a function of the Welsh Ministers or a devolved Welsh authority, unless that provision is contained in regulations made under clause 148(3) (i.e. within the legislative competence of the Senedd) or the provision is merely incidental to, or consequential on, provision that would be outside Welsh devolved legislative competence.

New Clause after Clause 148

Amendment 125

50. After clause 148, amendment 125 inserts a new clause entitled “EOR regulations: devolved authorities”. This clause introduces a new Schedule (Regulations under Chapter 1 of Part 3 or Part 6: restrictions on devolved authorities) which contains restrictions on the exercise of the powers under Part 6 by a devolved authority, which includes the Welsh Ministers.

Clause 152 – Public consultation etc

Amendment 126

51. Clause 152, as introduced requires the Secretary of State to consult the public before making EOR regulations which contain provision under:
 - a) clause 143(1) (specified environmental outcomes) or
 - b) amending, repealing or revoking existing legislation.
52. Amendment 126 replaces the “Secretary of State” in clause 152(1) with “appropriate authority” thus requiring the Welsh Ministers to undertake the same duty to consult the public before making certain EOR regulations. This requirement will also apply where the Welsh Ministers and the Secretary of State make joint EOR regulations.

Amendment 127

53. This amendment inserts “relevant” after “revoking” into clause 152(1)(b). This amendment is consequential on amendment 128 below.

Amendment 128

54. This amendment to clause 152(2) leaves out “The Secretary of State must consult such persons as the Secretary of State considers appropriate” and replaces it with “An appropriate authority must consult such persons as the appropriate authority considers appropriate”, thus extending the requirement to consult such persons as they consider appropriate to the Welsh Ministers before making certain EOR regulations.

Clause 153 – Guidance

Amendment 129

55. As introduced, clause 153 provides the Secretary of State with the power to require a public authority carrying out a function under Part 6 or “existing environmental assessment legislation” to have regard to any guidance that is issued by the Secretary of State.
56. Amendment 129 replaces “or existing environmental assessment legislation” in 153(1) with “other than under regulations made by a devolved authority acting alone”. This has the effect that a public authority carrying out a function under Part 6, other than under regulations made by a devolved authority acting alone, must have regard to guidance issued by the Secretary of State. Guidance making functions for the Welsh Ministers are provided through amendment 130.

Amendment 130

57. Amendment 130 amends clause 153 by inserting new clauses (1A) to (1H) after 153(1). The effect of the new clause (1A) is to extend the requirement on public authorities when carrying out a function under regulations made by the Secretary of State acting jointly with one or more devolved authorities to have regard to any guidance issued by the Secretary of State or any of the devolved authorities in relation to the function.
58. The amendment (1B) requires the Secretary of State, before issuing guidance under (1A) to obtain the consent of the Welsh Ministers where that guidance relates to a matter provision about which would be within Welsh devolved legislative competence (by virtue of the definition in section 148(4)).

59. Additionally, the amendments require the Welsh Ministers, before issuing any guidance under (1A) (where regulations have been made jointly by the Secretary of State and Welsh Ministers) to obtain the consent of the Secretary of State where that guidance relates to a matter which would be outside of Welsh devolved legislative competence.
60. Clause (1D) would require a public authority when carrying out a function under regulations made by the Welsh Ministers, when acting alone, to have regard to any guidance issued by the Welsh Ministers in relation to the function.
61. Clause (1G) requires a public authority when carrying out a function under “existing environmental assessment legislation” as listed in Part 3 of new Schedule (*Existing environmental assessment legislation*) to have regard to any guidance issued by the Welsh Ministers in relation to the function.
62. The remaining amendments (1C), (1E), (1F) and (1H) relate to the other devolved administrations, mirroring the amended provision of clause 153 as they apply to Wales.

Amendment 131

63. As introduced, clause 153(2) gives a power that EOR regulations may require *any person carrying out a function* under EOR regulations to have regard to guidance issued by the Secretary of State in relation to that function, and failure to do so would mean that the function is not regarded as having been validly carried out.
64. Amendment 131 amends this to replace “Secretary of State” in 153(2) with “an appropriate authority”, thus extending this requirement to include guidance issued by the Welsh Ministers.

Clause 154 - Interaction with existing environmental assessment legislation and the Habitats Regulations

Amendments 132, 133, 134, 135 and 136

65. On introduction, clause 154 provides that EOR Regulations may make provision about, or in connection with, the interaction of Part 6 with existing environmental legislation or the Habitats Regulations.
66. Amendments 132, 133, 134, 135, and 136 all insert the word “relevant” before “existing environmental assessment legislation” and “Habitats Regulations”. The effect of this will be to limit the power under subsection (2)(a) of Clause 154 to “relevant existing environmental assessment legislation” and “relevant Habitats Regulations”.

Amendment 137

67. Amendment 137 inserts more devolved legislation within the definition of “the Habitats Regulations” (five sets of Regulations are now listed).

Amendment 138

68. This amendment inserts a new 154(5) which sets out a new definition of “the relevant Habitats Regulations” It includes, at subsection (c), that in relation to EOR regulations

made by the Welsh Ministers acting alone, it means the legislation listed in the definition of “the Habitats Regulations” so far as it applies in relation to Wales.

Clause 157 – Interpretation of Part 6

Amendments 140 to 145

69. Clause 157(1) as introduced, defines “Existing environmental assessment legislation”. Amendment 140 introduces the new Schedule (Existing environmental assessment legislation) which is being inserted after Schedule 12 in the Bill and which lists all of the relevant existing environmental assessment legislation for the purposes of this definition. Amendment 92 inserts the new Schedule and that is dealt with below.
70. Amendment 141 omits the list of legislation as included in the Bill on introduction as this is now being moved into the new Schedule (*Existing environmental assessment legislation*).
71. Amendment 142 inserts a new clause 157(1A) which defines “relevant existing environmental assessment legislation” as that listed in certain parts of the Schedule depending on what appropriate authority is making the EOR regulations.:
72. Amendment 143 provides the definition for Part 6 of “an appropriate authority” as being the Secretary of State, a devolved authority or the Secretary of State acting jointly with one or more devolved authorities.
73. Amendment 144 provides the definition of “devolved authority” for Part 6. This includes the Welsh Ministers, the Scottish Ministers, and a Northern Ireland department”.
74. Amendment 145 is consequential on amendment 142.

PART 12 – Miscellaneous

Amendment 271

75. Amendment 271 inserts a new clause after clause 226 in Part 12 of the Bill. The amendment inserted will remove the restrictions on the Senedd in relation to these concurrent powers by adding Chapter 1 of Part 3 or Part 6 of the Bill to the list of enactments in paragraphs 9(8)(b) and 11(6)(b) of Schedule 7B to the Government of Wales Act 2006. This will then allow the Senedd to alter the concurrent arrangements in future without needing the UK Government’s agreement.

PART 13 – General

Clause 231 – Regulations

Amendments 288, 291, 294 and 298

76. Amendments 288, 291, 294 and 298 remove the reference to regulations under Part 6 and Part 3, Chapter 1 in clause 231 (Regulations) because the rules governing such regulations are to be set out in the Schedule inserted after Schedule 20.

Clause 233 – Extent

Amendments 299, 300 and 302

77. These amendments clarify the extent provisions of the new Schedule to be inserted after Schedule 12 relating to restrictions on devolved authorities.

Clause 234 – Commencement and transitional provision

Amendments 310 and 313

78. These amendments of clause 234 clarify that the Schedule to be inserted after Schedule 12 which contains restrictions on the exercise of the powers by the Welsh Ministers comes into force on such as day as the Secretary of State may by regulations appoint so far as it relates to Chapter 1 of Part 3, or 2 months after Royal assent in respect of Part 6.

SCHEDULE – Regulations under Chapter 1 of Part 3 or Part 6: Restrictions on Devolved authorities

Amendment 91

79. Amendment 91 introduces and inserts a new Schedule “Regulations under Chapter 1 of Part 3 or Part 6: Restrictions on Devolved authorities” which contains various provisions about the restrictions placed on the devolved authorities, including the Welsh Ministers, when making regulations under Chapter 1 of Part 3 (Planning Data) or Part 6 (Environment Outcome Reports).
80. The key provisions that would affect the Devolved Authorities’/Welsh Ministers’ regulation making powers are set out below.

No power to make provision outside of devolved competence

81. No provision could be made by a Devolved Authority/Welsh Ministers when acting alone in regulations under Chapter 1 or Part 3 or Part 6 unless the provision is within the devolved competence of the Devolved Authority (paragraph 1(1)). The definition of ‘devolved competence’ is wider here than included in clause 143 and 84 and includes provision within the legislative competence of the Senedd if it were contained in an Act of the Senedd (including any provision that could be made only with the consent of a Minister of the Crown or, if it is provision which could be made in other subordinate legislation by the Welsh Ministers (paragraph 6)).

Requirement for consent where it would be otherwise be required

82. Minister of Crown consent would be required before any provision is made by the Welsh Ministers acting alone in regulations under Chapter 1 of Part 3 or Part 6 if that provision contained in an Act of Senedd Cymru, would require Minister of Crown consent (paragraph 2(1)).
83. However, consent would not be required if the provision could be made in subordinate legislation made otherwise than under this Act by the Welsh Ministers acting alone (paragraph 2(3)).

Requirement for joint exercise where it would otherwise be required

84. No regulations could be made under Chapter 1 or Part 3 or Part 6 by the Welsh Ministers if they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act would be made jointly with a Minister of the Crown, unless the regulations, are made jointly with the Minister of the Crown (paragraph 3(2)).

85. However, again paragraph 3(2) would not apply if the provision could be contained in an Act of Senedd Cymru without the need for the consent of a Minister of the Crown or if different subordinate legislation is made otherwise than under this Act by the Welsh Ministers, acting alone (paragraph 3(4) (a) and (b)(ii)).

Requirement for consultation where it would otherwise be required

86. No regulations could be made under Chapter 1 of Part 3 or Part 6 by the Welsh Ministers acting alone, so far as they contain provision which, if (1) contained in an Act of Senedd Cymru, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown (paragraph 4(1), unless the provision could be contained in an Act of Senedd Cymru where no requirement for the consent of a Minister of the Crown, or consultation was needed (paragraph 4(5)) or if the provision could be contained in different subordinate legislation made by the Welsh Ministers which did not require Minister of the Crown consent (paragraph 4(6)).

Meaning of devolved competence

87. Paragraph 6(a) and (b) defines 'within the devolved competence of the Welsh Ministers' if-
- a) it were contained in an Act of Senedd Cymru (including any provision that could be made only with the consent of a Minister of the Crown), or
 - b) it is provision which could be made in other subordinate legislation by the Welsh Ministers.

SCHEDULE – Existing Environmental Assessment Legislation

Amendment 92

88. Amendment 92 inserts this new Schedule (*Existing environmental assessment legislation*) which is being inserted after Schedule 12 in the Bill and it lists all of the relevant existing environmental assessment legislation for the purposes of the definition of "existing environmental assessment legislation".
89. The relevant legislation for Wales is found in Part 1 – England and Wales and Part 2 – Wales.

SCHEDULE – Regulations under Chapter 1 of Part 3 or Part 6 – Form and Scrutiny

Amendment 260

90. This amendment inserts a new Schedule which contains provisions about the form and scrutiny of Planning Data and EOR Regulations that are made by the Secretary of State acting alone or jointly with a Devolved Authority; or the Welsh Ministers acting alone.
91. The key provisions that affect the Welsh Ministers when acting alone are that:
- any regulations made by the Welsh Ministers acting alone must be by statutory instrument (paragraph 1(1)(b));
 - any regulations which contain provision under section 138, 139, 140, 144(2) or 145 (paragraph 2(1)) made by the Secretary of State or the Welsh Ministers acting alone may (paragraph 2(1)):

- not be made unless a draft of the SI has been laid before, and approved by a resolution of, each House of Parliament;
- not be made unless a draft of the SI Has been laid before, and approved by a resolution of, Senedd Cymru.
- Paragraph 3 provides that any regulations which contain provision under Chapter 1 of Part 3 (Planning Data) or Part 6 and which do not fall within the sections listed in paragraph 2(1) must be:
 - made by SI by the Secretary of State when acting alone and the SI will be subject to annulment following resolution of either House of Parliament;
 - made by SI by the Welsh Ministers when acting alone and the SI will be subject to annulment following a resolution of Senedd Cymru.
- Paragraph 3 will not apply if a draft of the SI has been laid before and approved by each House of Parliament (where the Secretary of State is acting alone) or Senedd Cymru (where Welsh Ministers are acting alone).

92. These provisions are the same in circumstances where the Secretary of State acts jointly with a Devolved Authority/the Welsh Ministers.

Welsh Government position on the proposed amendments

Part 1

93. 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.
94. 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.
95. 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.
96. Amendment 9 place 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).
97. However, concerns remain in relation to the effect of the levelling up missions on how funds supporting the levelling up agenda are spent. In the revised LCM and in my letter to the Minister for Levelling Up I stressed the importance of a co-decision-making role on agreeing the outcomes and how funds supporting the levelling up agenda should be spent, in order to ensure policy coherence and avoid duplication.

98. These concerns also extend to how the levelling up missions and associated metrics have been developed without consultation with the Welsh Government. This is despite clear statements in the Levelling Up White Paper that recognise success will *require close collaboration with...the Welsh Government... as responsibilities for many areas of policy critical to levelling up are devolved*'. The timing of laying the first statement of levelling-up missions means a very small window for meaningful consultation to happen for the first statement of levelling up missions which amendment 9 provides for.
99. 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.
100. The UK Government has drafted and published the 12 levelling-up missions that they have indicated the Statement of Levelling Up Missions to be laid following Royal Assent of the Bill will be based on those in the Levelling Up White Paper (February 2022) and Explanatory Note. The full array of metrics for the missions will be contained in this first statement.
101. The UK Government have stated that the rationale for including the detail of missions in a statement laid before Parliament (the "Statement of Levelling Up Missions"), rather than in the legislation itself is to create a mechanism that obliges the UK Government and future governments to ensure their objectives for reducing geographical disparities are up to date and transparent, and to publish them in a way that ensures accountability.
102. Our view, as set out in the revised LCM remains 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 identical reporting, scrutiny, review etc. obligations.
103. This is because the objective of "levelling-up" to significantly reduce geographical disparity in the UK is not a reserved matter. Whilst the Welsh Ministers would not introduce legislation in respect of England, the Senedd would have legislative competence to legislate to achieve the same outcome of "levelling-up" for Wales.

Parts 3, 6, 12, 13 and Schedules

104. 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.
105. The amendments across Parts 3, 6, 12, 13 and related Schedules also provide the Welsh Ministers regulation making 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.

106. The loss of EIA and SEA regulation making powers because of exiting the European Union have made it difficult to react in a timely way to changes the UK Government will make to programme and project environmental assessment. Particularly for some EIA regimes in Wales with a higher proportion of cross-jurisdictional projects, the inability to align regulations may cause delays and expense deploying important infrastructure schemes such as renewable energy generation.
107. Irrespective of whether Welsh consent regimes move to the EOR approach, devolved Welsh bodies such as Natural Resources Wales and local planning authorities will have to use EOR when responding to reserved consent regimes such as National Significant Infrastructure Projects.
108. 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.

Financial implications

109. There are no financial implications for Wales in relation to the amendments.
110. The financial impact of the Bill as affects Wales is summarised in the LCMs laid on 28 September and 25 November.

Conclusion

111. On Part 1 (Levelling Up Missions), we disagree with the UK Government on the requirement for legislative consent. It is the Welsh Government's view that the Senedd could pass equivalent provisions to those contained within Part 1 and therefore it is our view that Part 1 of the Bill would require the consent of the Senedd. In my view the amendments tabled by the UK Government on 4 July 2023 on Part 1 (Levelling Up Missions) improve upon the position set out in the original revised LCM laid on this Bill on 25 November 2022, to the extent that I can now recommend that the Senedd gives consent to the Bill. However, our concerns about the implementation of this duty, its interaction with funding allocations, and how the UKG will discharge their duties to have regard to the role of the Welsh Minister and Senedd and consult with Welsh Ministers remain. 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.
112. 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.

113. The amendments made here mean that I am able to support their application to Wales. The position of Environmental Impact Assessment (EIA) in Wales is currently very complicated, implemented through a complex range of different methods, covering a very large number of policy areas, ranging from planning, water, marine through to agriculture and transport. More importantly the legislation is unable to adapt to changing circumstances as the majority of these policy areas do not have primary legislation to enable their future amendment. These issues will be resolved and the amendments ensure our devolution settlement is not affected.

114. I therefore recommend the Senedd consents to this Bill.

Julie James MS
Minister for Climate Change
16 July 2023

Annex A | Levelling-Up Missions

Source: Levelling-Up and Regeneration Bill (Explanatory Notes) [Levelling-up and Regeneration Bill \(parliament.uk\)](https://www.parliament.uk/levelling-up-and-regeneration-bill)

The 12 Levelling Up Missions

Boosting productivity, increasing pay, and creating jobs

- a. Increasing living standards: pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city, and the gap between the top performing and other areas closing.
- b. Backing Research and Development (R&D) by increasing public investment in R&D outside the South East by at least 33% over this Parliament and at least 40% by 2030.
- c. Overhauling public transport so local connectivity will be significantly closer to the standards of London, with better services, simpler fares and integrated ticketing.
- d. Transforming digital connectivity across the UK with nationwide gigabit-capable broadband with 4G and 5G coverage for the majority.

Spreading opportunity and improving public services

- e. Improving education outcomes so that 90% of primary school children achieve the expected standard of reading, writing and maths.
- f. Increasing the number of adults who complete high quality skills training, with 200,000 more people completing training annually in England.
- g. Increasing healthy life expectancy, and narrowing the gap between areas where it is highest and lowest.
- h. Improving wellbeing in every area of the UK with a closing gap between the top performing and low performing areas.

Restoring pride in place and community

- i. Boosting satisfaction with town centres and engagement with local culture and community.
- j. Increasing home ownership and housing standards, with more first-time buyers in all areas and the number of non-decent homes down by 50%
- k. Cutting crime with homicide, serious violence and neighbourhood offences falling, with a focus on the worst affected areas.

Empowering local leaders and communities

- l. Giving every part of England that wants one a devolution deal, with powers at, or approaching, the highest level of devolution and a simplified long-term funding settlement.