

LEGISLATIVE CONSENT MEMORANDUM

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 UK Parliament, the House of Commons, on 11 May 2022. The Bill can be found at: <https://bills.parliament.uk/bills/3155> .
3. On 24 May, I wrote to the Llywydd explaining that due to the very limited engagement by the UK Government prior to the Bills’ introduction and the complexity of the Bill, it has taken time to fully consider the devolution consequences of what is being proposed and consequently it has not been possible to lay this LCM within the normal two-week SO29 deadline.

Policy Objectives

4. 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.

Summary of the Bill

5. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
6. The Bill makes 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.

Provisions in the Bill for which consent is required

7. The clauses with particular relevance to matters within the legislative competence of the Senedd are:

Part 1 (Levelling Up Missions)

Setting missions

Clause 1 Statement of levelling-up missions

8. The clause creates a duty on a minister of the crown to prepare and lay a statement of levelling-up missions before Parliament. This statement will set out the objectives (“levelling-up missions”) the UK Government intends to pursue to reduce geographical disparities in the United Kingdom. The statement may be laid for a period of no less than five years (mission period). The provision also provides relevant definitions, the time period and target date of the mission and how progress in delivering those missions will be measured.

Reporting on missions

Clause 2 Annual etc reports on delivery of levelling-up missions

9. The clause establishes the obligation to produce the annual report and define its content requirements (including an assessment of progress, action undertaken to deliver the mission or will be undertaken to deliver the mission). The report may also indicate whether a mission is no longer being pursued and why.

Clause 3 Reports: Parliamentary scrutiny and publication

10. The clause requires all reports to be laid before Parliament and sets out timings for doing so.

Revision of methodology and metrics or target dates

Clause 4 Changes to mission progress methodology and metrics or target dates

11. The Clause provides the ability to amend the methodology and metrics supporting the levelling-up missions or to amend the target dates for delivery in between the normal reporting cycle.

Review of missions

Clause 5 Reviews of statements of levelling-up missions

12. The clause provides for the statement of levelling-up missions to be reviewed periodically and defines the terms for such reviews. The purpose of the review is defined, stating that review should consider whether the levelling-up missions are achieving their objectives, whether they should no longer be pursued or whether they should be replaced with new missions.

General

Clause 6 Interpretation of Part 1

13. The clause contains a list of relevant definitions that appear in the Chapter, including “geographic disparities” to which missions relate: “geographical disparities” is defined as geographical disparities in economic, social or other opportunities or outcomes;

Part 3 (Planning)

Chapter 1 (Planning Data)

Clause 75 Power in relation to the processing of planning data

14. The clause gives the Secretary of State the power to regulate the processing of planning data by relevant planning authorities (RPA’s) to create binding approved data standards for that processing. It also provides RPA’s with the power to require planning data to be provided to them in accordance with the relevant approved data standards. Importantly, RPA’s is defined in clause 81.

Clause 76 Power in relation to the provision of planning data

15. The clause allows RPA’s, by published notice, to require a person to provide them with planning data that complies with an approved data standard. The clause also sets out exceptions for when planning authorities may not impose such requirements including on the Crown and Courts.

Clause 77 Power to require certain planning data to be made publicly available

16. The clause allows planning data regulations to make provision requiring a relevant authority to make use of its planning data as specified in the regulations publicly available under an approved licence.

Clause 79 Disclosure of planning data does not infringe copyright in certain cases

17. The clause seeks to clarify that in making planning data available, which includes copyright material for prescribed purposes, an RPA or person does not infringe copyright.

Clause 80 Requirements to consult devolved administrations

18. The clause provides that the Secretary of State may only make planning data regulations which contain provision within devolved competence after consulting the Welsh Ministers. Devolved competence includes legislative competence, executive competence, and the conferral, modification or removal of a function of the Welsh Ministers, a devolved Welsh authority or a person exercising functions of a public nature which could be conferred by a provision of the Senedd.

Clause 81 Interpretation of Chapter

19. The clause provides definitions of key terms that are used throughout Chapter 1 (Planning Data). The majority of the definitions for RPA's capture bodies operating in England, or in non-devolved areas. A "local planning authority" is defined with reference to section 15LH of the Planning and Compulsory Purchase Act 2004, which is a provision inserted by section 87 of, and Schedule 7 to the Bill and covers councils in England. Similarly, RPA includes the Secretary of State acting under a 'relevant planning enactment', and where the Secretary of State has such functions they may apply to Wales, but in non-devolved areas. However, the definition of 'relevant planning enactment' does include Part 5 (Environmental Outcome Reports) of the Bill. As currently drafted the clause provides for the Secretary of State to exercise functions in devolved areas in Wales.

Chapter 4 (Grant and Implementation of Planning Permission)

Clause 96 (Street Votes)

20. The clause allows the Secretary of State by regulations to make provision for a system that permits residents of a street to propose development on their street and determine, by means of a vote, whether that development should be given planning permission on condition that certain prescribed requirements are met.
21. The clause is a placeholder clause that will be replaced by substantive provisions during the passage of the Bill.

Chapter 6 (Other Provision)

Clause 112 (Regulations and Orders under the Planning Acts)

22. The clause relates to a technical legal amendment to existing regulation and order making powers in the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990, to provide express powers to enable consequential, supplementary, incidental, transitional, transitory or

saving provision to be made when exercising those powers. The clause also makes consequential amendments repealing the provisions that are no longer needed given the new general powers.

23. The Welsh Ministers have Regulation and Order making powers under the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act and the Planning (Hazardous Substances) Act 1990, however, the current general powers to make statutory instruments (as Regulations or Orders) do not expressly refer to making ancillary provision. The above provisions would correct that omission.

Part 5 (Environmental Outcomes Reports)

Setting environmental outcomes

Clause 116 Power to specify environmental outcomes

24. The clause gives the Secretary of State a new power to make Environmental Outcomes Reports (EOR) regulations to set specified environmental outcomes in the United Kingdom or a relevant offshore area against which relevant consents and relevant plans will be assessed. The clause also broadly defines “Environmental protection” and the related definitions of “natural environment” and “cultural heritage”.

Power to require environmental outcomes reports

Clause 117 Environmental outcomes reports for relevant consents and relevant plans

25. The clause allows the Secretary of State to make regulations requiring the preparation of an EOR for relevant plans and relevant consents. The EOR must assess anticipated environmental effects against specified environmental outcomes, the impact of any proposed mitigation or compensation as well as considering reasonable alternatives to the consent or plan, or any element of them. Where an EOR is required, this must be taken into account when considering whether to grant consent or bring a plan into effect.

Defining the consents and plans to which this Part applies

Clause 118 Power to define “relevant consent” and “relevant plan” etc

26. The clause allows the Secretary of State to set out in regulations which consents and plans are covered by this Part and the requirements to produce an EOR. It also provides for a scenario where consent must be granted by the EOR itself.

Assessment and monitoring

Clause 119 Assessing and monitoring impact on outcomes etc

27. The clause allows the Secretary of State to make regulations setting out how relevant consents and relevant plans should be assessed and monitored once in place.

Safeguards, devolution and exemptions

Clause 120 Safeguards: non-regression, international obligations and public engagement

28. The clause requires the Secretary of State to be satisfied that making the EOR regulations will not result in environmental law providing an overall level of protection that is less than that provided by environmental law at the time the Act is passed, and to be consistent with the UK's international obligations.

Clause 121 Requirements to consult devolved administrations

29. The clause provides that the Secretary of State must consult the relevant Devolved Ministers where regulations contain provision within Welsh devolved competence.

Clause 122 Exemptions for national defence and civil emergency etc

30. This clause provides powers to allow the Secretary of State to direct when an EOR is not required.

Enforcement

Clause 123 Enforcement

31. The clause sets out the enforcement provisions that can be made in respect of EOR. The provisions can include criminal offences (but not punishable with imprisonment), civil sanctions (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings), and powers of entry and inspection. The Secretary of State is also under a duty to consult relevant public authorities when making regulations in respect of enforcement.

Reporting

Clause 124 Reporting

32. The clause provides that EOR regulations may make provision requiring a public authority to report on, or provide information in relation to, the delivery of specified environmental outcomes.

General

Clause 125 Public consultation etc

33. The clause provides the consultation requirements when making regulations under this Part. The Secretary of State must consult the public for the core elements of the new system, and undertake consultation with relevant public authorities for more technical and procedural matters.

Clause 126 Guidance

34. The clause requires public authorities to have regard to guidance issued by the Secretary of State when exercising their functions in respect of environmental assessment.

Clause 127 Interaction with existing environmental assessment legislation and the Habitats Regulations

35. The clause ensures that legislation made under this part is able to interact with existing environmental assessment legislation, as well as the Habitats Regulations, subject to non-regression provisions.

Habitats Regulations

Clause 128 Consequential repeal of power to make provision for environmental assessment

36. The clause makes consequential repeals of the power to provide for Environmental Impact Assessments in the Town and Country Planning Act 1990.

Clause 129 EOR regulations: further provision

37. This clause details further provisions that EOR regulations may make including the power to make consequential etc., provision which amends, repeals or revokes any legislation including Acts or Measures of the Senedd.

Clause 130 Interpretation of Part 5

38. The clause provides interpretation of key terms relating to this Part.

Part 10 (Miscellaneous)

Clause 186: Review of governance etc of Royal Institute of Chartered Surveyors

39. The clause will enable the Secretary of State to commission periodic reviews of RICS that will give the Secretary of State information about the governance and performance of RICS. The purpose of this clause is to ensure that RICS performs in the public interest.

Clause 187: Vagrancy and begging

40. In relation to clause 187, the UK Police, Crime, Sentencing and Courts Act 2022 makes provision to allow for the repeal of the Vagrancy Act 1824 (which criminalises begging and rough sleeping). The UK Government have recently consulted on options for replacing the Vagrancy Act 1824 and have indicated that the repeal of the Act will not come into force until replacement legislation is in place. Clause 187 of the Bill is the first step towards this successor legislation

41. We understand that this clause is a placeholder clause which allows for a substantive clause to be brought forward by amendment later in the passage of the Bill.

42. The placeholder clause allows the Secretary of State to make provision through regulations, to create a criminal offence of, and/or allow a civil penalty to be issued to someone, begging or sleeping rough. The type of conduct that can be covered by these regulations is the same as or

similar to that which is currently covered by sections 3 and 4 of the Vagrancy Act 1824. Clause 187 also gives scope for provision which involves assisting someone who is begging or sleeping rough.

Relevant Provisions

43. Consent is required for these provisions because they fall within the legislative competence of the Senedd in so far as they relate to:

Levelling up

44. The purpose of the provisions in Part 1 are to “reduce geographical disparities” in economic, social or other opportunities. The purpose of the provisions do not relate to any reserved matters under the Government of Wales Act 2006.
45. The Well-being of Future Generations (Wales) Act 2015 provides for an integrated suite of well-being goals agreed by the Senedd, and accompanying national indicators and milestones, annual reporting and substantive duties on Government and devolved public bodies in Wales to improve economic, social, environmental and cultural well-being (including a more equal Wales).
46. It is the Welsh Government’s 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 identical reporting, scrutiny, review etc. obligations as set out in Part 1 of the Bill. Therefore, it is our view is that Part 1 of the Bill would require the consent of the Senedd.
47. 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. The Welsh Government would not recommend the Senedd consents to these provisions and cannot support Part 1 of the Bill.

Planning

48. Part 3 (Chapter 1), clause 96, and clause 112 provide the Secretary of State with various new powers in relation to planning. Planning is a devolved matter, except in relation to paragraph 184 of Schedule 7A, Part 2 Specific Reservations of the Government of Wales Act 2006 (GoWA).

Environmental Assessment

49. Part 5 of the Bill replaces the EU environmental assessment system with a new framework for Environmental Outcome Reports. The existing environmental assessment legislation covers an extensive breadth of subject matters which existing environmental legislation touches upon, including planning, transport, water, agriculture, land drainage etc. In many of these areas there are both devolved and non-devolved matters. Despite some areas that are covered by the proposed clauses being

reserved, it is the Welsh Government's view that substantially the same framework for environmental outcome reports could be included in an Act of the Senedd, for those subject areas within devolved competence.

RICS

50. The provision relates to the review of RICS, and surveyors (and chartered surveyors) are not professions listed as a reserved matter in paragraph 140 of Schedule 7A to GoWA.

Vagrancy

51. The repeal of the Vagrancy Act 1824 and its legislative replacement in clause 187 impacts on the devolved matters of housing and homelessness. Clause 187 is a placeholder clause and so the Welsh Government will continue to review this clause as it develops and update the Senedd accordingly.

UK Government view on the need for consent

52. The UK Government view on areas of the Bill that require the legislative consent of Senedd Cymru are:

Substantive areas within competence

53. The Bill comprises of three elements which extend and apply to Wales, which are, in the view of the UK Government, within the legislative competence of the Senedd Cymru:

- a) Part 3 (Planning), Chapter 1 (Planning Data), Chapter 4 (Grant and Implementation of Planning Permission) clause 96 (street votes) and Part 3 (Planning), Chapter 6 (Other Provision) clause 112 (Regulations and Orders Under the Planning Acts)
- b) Part 5 (Environmental Outcomes Reports)
- c) Part 10 (Miscellaneous), clause 186 (Review of governance etc of RICS)

Minor or consequential areas within competence

54. There are a number of provisions in the Bill that apply in England and have effect outside England, all of which are, in the view of the UK Government, minor or consequential. These provisions amend the text of the legislation which applies in Wales, but solely to preserve the current legal positions for Wales and have no practical effect. These are:

- a) Part 3 (Planning), Chapter 2 (Development plans) (clauses 82-84) and (Local Plans) (clause 87) applies to England and Wales
- b) Part 3 (Planning), Chapter 3 (Heritage)
- c) Part 3 (Planning), Chapter 4 (Grant and Implementation of Planning Permission) Clause 97 (Crown Development)
- d) Part 3 (Planning), Chapter 4 (Grant and Implementation of Planning Permission) Clause 100 (Completion Notices)
- e) Part 3 (Planning), Chapter 5 (Enforcement of Planning Controls)
- f) Part 4 (Infrastructure Levy) applies to England and Wales
- g) Part 6 (Development Corporations) applies to England and Wales

Reasons for making these provisions for Wales in the Levelling up and Regeneration Bill

55. The Bill contains provisions that could benefit the people of Wales.
56. Part 1: The setting of long term levelling-up missions, associated metrics and reporting is consistent in part with the approach taken in to the setting of well-being goals contained in the Well-being of Future Generations (Wales) Act 2015.
57. Clause 186 concerns RICS. RICS is a professional body for surveyors, operating with a Royal Charter which provides that in its regulatory activities it must promote the public advantage. Clause 186 is designed to enable independent reviews to be undertaken to ensure that the governance and performance of RICS are such that they operate in the public interest and for recommendations to be made.
58. Two areas, on planning data and environmental outcome reports, have potential benefits for Wales, but their current drafting means this benefit cannot be realised. The current system of environmental assessment is complicated across sectors and devolved areas and I see the potential benefits of an improved system of planning outcome reports. This would avoid contradictions and uncertainty in the law and enable smooth consent routes for cross jurisdictional schemes. I do not, however, accept the current provisions given the way they apply to Wales and the loss of our ability to make Welsh regulations in this area.
59. There are also benefits to a digital service design of planning, making the system easier to use. Again, the current drafting of powers on digital data does not accord with our desire to legislate for Wales.
60. There are also other fundamental concerns with the drafting of the Bill. The Bill contains two provisions that are identified as placeholder provisions. These are Clause 96 (Street Votes) and Clause 187 (Vagrancy and begging). The intention is the clauses will be replaced by substantive provisions during the passage of the Bill. This creates a number of issues:
 - The placeholder clauses are drafted widely and it is not yet clear whether the replacement provisions will be relevant provisions for the purposes of SO 29.
 - It is understood that clause 187 is intended to apply to England and Wales. Clarity on this is being sought as the application table in the Explanatory Notes states clause 187 does not apply to Wales however, the clause as currently drafted, does not limit the Secretary of State's power to make regulations that apply to England only.
 - Clause 96 is also a placeholder provision. The application table in the Explanatory Notes states it only applies to England, however as currently drafted it applies to both England and Wales.

- Given the placeholder nature of the clauses, I am not currently in a position to indicate whether I support the application of the provisions to Wales.

Financial implications

61. The UK Government identify the overall Bill will have financial implications for the public sector, including local government, central government and the Planning Inspectorate. The UK Government identifies these costs will all be balanced by efficiency savings.

Conclusion

62. It is the view of the Welsh Government that it is not appropriate to deal with the majority of these provisions, as drafted on introduction, in this UK Bill. I support the inclusion of clause 186 as this supports the improvement of RICS, which will in turn assist in improving building safety in Wales. RICS has members across the UK (and internationally) and I consider including this review provision in this Bill is appropriate given their remit.

63. It is the Welsh Government's view that the Senedd could pass equivalent provisions to those contained within Part 1 therefore I cannot recommend that the Senedd consents to the provisions in Part 1.

64. I do not support the clauses in relation to planning as they either do not contain the necessary detail to make an informed decision over the effect the clauses have, or they would have an effect that I do not support. However, on these clauses I am open to persuasion on amendments to legislation in areas that would benefit Wales but would also protect our devolution settlement.

65. In terms of the provision on vagrancy, the clause does not contain the necessary detail for me to identify whether the intended effect is appropriate for Wales, and so I cannot indicate whether I support the provisions applying to Wales.

66. I will update the Senedd as appropriate once further discussions have taken place with the UK Government. Should relevant amendments be tabled or agreed to for the purposes of SO29 I will lay further memoranda in accordance with the Standing Orders.

Julie James MS
Minister for Climate Change
28 September 2022