

## LEGISLATIVE CONSENT MEMORANDUM

### ADVANCED RESEARCH AND INVENTION AGENCY BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum 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 Advanced Research and Invention Agency Bill (ARIA) (“the Bill”) was introduced in the House of Commons on 2 March 2021. The Bill was made subject to a carry-over motion on 23 March and consideration by the House of Commons concluded on 7 June. House of Lords First reading took place on 8 June and the date for Lords Second reading is yet to be confirmed. The Bill, if passed, is expected to receive Royal Assent in the autumn. The Bill can be found at: <https://bills.parliament.uk/publications/41755/documents/351>

#### Policy Objective(s)

3. The UK Government’s stated policy objectives are to realise its ambition, as presented in December 2019 Queen’s Speech, for “a new approach to funding emerging fields of research and technology” which “will provide long term funding to support visionary high-risk, high-payoff scientific, engineering, and technology ideas, and [which] will complement the UK’s existing world class research system.”
4. The UK Research and Development Roadmap, published in July 2020, sets out the Government’s intention to cement the UK’s position as a science superpower. The R&D Roadmap described the Government’s plans to invest £800 million in a unique and independent funding body for advanced research, broadly modelled on the US Advanced Research Projects Agency (ARPA). The creation of ARIA is part of the Spending Review 2020 commitment to invest £14.6 billion in research and development (R&D) in 2021-22 with a view to increasing economy-wide investment in R&D to 2.4% of GDP by 2027.
5. As the R&D Roadmap sets out, ARIA will champion bold and transformative R&D which has a high chance of failure but can produce the greatest long-term rewards. ARIA “will back breakthrough technologies and basic research by experimenting with new funding models across long-term time horizons” and “invest in new ideas and empower researchers to deliver radical technological advancements”.

#### Summary of the Bill

6. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.

7. The Bill establishes ARIA and makes provision for ARIA to conduct, or commission or support others to undertake, scientific research, development and exploitation of scientific knowledge, to collect, share, publish and advance scientific knowledge and to provide funding in the exercise of its functions. The Secretary of State may provide grant funding to ARIA.
8. ARIA may develop and exploit scientific knowledge and use scientific research for the purposes of creating prototypes or introducing products to market. ARIA may commission or support others to do the same. ARIA may take an equity stake in a company with which it has partnered to conduct basic research with the intent of bringing a product to market. ARIA may continue to provide technological input after a product has gone to market.
9. ARIA may disseminate scientific knowledge by convening conferences or seminars, publishing academic or other papers for closed or public consumption. ARIA may also provide financial support including making grants, loans, investments in companies or other entities, or any other payments including prizes.
10. In performing its functions, ARIA is not restricted to activities in the United Kingdom (UK). However, ARIA must have regard to the desirability of doing so for the benefit of the UK through:
  - a. contributing to economic growth, or an economic benefit, in the UK;
  - b. promoting scientific innovation and invention in the UK; or
  - c. improving the quality of life in the UK (or in the UK and elsewhere).
11. The general subject of the Bill is the creation of, and conferral of powers and duties on, ARIA. The Secretary of State may make grants to ARIA and ARIA will have powers to provide funding to others in the exercise of its functions.

### **Provisions in the Bill for which consent is required**

12. ARIA is intended to be a UK-wide organisation, similar to UK Research and Innovation (UKRI) and its Research Councils. The Bill includes provision to make ARIA's funding powers (for science, research and innovation) a reserved matter by amending paragraph 87 of Section C11 of Schedule 7A of the Government of Wales Act 2006, so that ARIA sits alongside UKRI and the Research Councils (Section 9 (1) Schedule 3A of the Bill, see below).
13. Consent of the Senedd is required on the majority of the provisions of the Bill as the Senedd has competence to legislate in the same or similar terms in relation to Wales. The main subject matter of the Bill, research and innovation (the term 'innovation' is used in the Bill as a descriptor along with the term 'invention' but 'innovation' is the more widely accepted term and hence is used here), is a devolved area of the law. In our view, the following provisions (Clauses and Schedules) in the Bill require legislative consent:

### Clause 1. Establishment of ARIA

This covers the establishment and naming of the body and introduces Schedule 1 (details of the agency and its administration). Consent is required – there is no reservation or restriction on the Senedd establishing a funding and research body for Wales in similar terms to ARIA.

### Clause 2. ARIA's functions

This considers the conducting of scientific research, developing and exploiting scientific knowledge and providing financial support which may be subject to conditions. The activities are not restricted to the UK. Also, it imposes a duty to have regard to the benefit of the UK, through economic benefit, promoting innovation and improving quality of life in the UK and elsewhere. Consent is required – the Senedd can legislate to confer these functions on a body it creates. Any duty it imposes similar to the ARIA duty to have regard to the benefit of the UK would be restricted to “for the benefit of Wales”.

### Clause 3. Ambitious research, development and exploitation: tolerance to failure

ARIA may give particular weight to potential for significant benefits that carry a high risk of failure. Consent is required – this is a function that the Senedd could confer on a body it creates.

### Clause 4. Grants to ARIA from the Secretary of State

The SoS may give grants to ARIA which may be subject to conditions. Consent is required – it is within the Senedd's competence to legislate to confer these funding powers on a body it creates.

### Clause 5. National security directions

The SoS may give ARIA directions as to the exercise of its functions if the SoS considers it necessary in the interests of national security. ARIA must comply. Consent is required, as this provision operates in conjunction with the substantive clauses of the Bill and the Senedd has competence to so direct a body established by the Senedd in Wales for the same purposes. This clause is not about national security but the giving of directions.

### Clause 6. Information

ARIA must provide the SoS with information upon request in connection with the SoS's functions in relation to ARIA, unless this breaches data protection legislation or legal professional privilege. Consent is required as the Senedd has competence to impose this duty on a similar body to ARIA that it created.

### Clause 7. Transfer schemes in respect of Schedule 2

This introduces Schedule 2 which is covered below.

### Clause 8. Power to dissolve ARIA

The SoS may dissolve ARIA by regulations but not within 10 years of the date the Act is passed. There must be consultation before the regulations are made. Consent is required – the Senedd has competence to legislate for dissolution of a body it creates by regulation in the same terms.

### Clause 9. Consequential amendments in respect of Schedule 3

This introduces Schedule 3 which is covered below.

### Clause 10. Power to make consequential provision

The SoS may by regulations modify any “relevant provision” the SoS considers appropriate in consequence of any provision of this Act or any regulations made under section 8. “Relevant provision” means primary legislation passed before the end of the Session in which the Act is passed, or retained EU legislation. “Primary legislation” means an Act, an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru and Northern Ireland legislation. Consent is required as the Senedd may include a provision similar to this in any Act (but only in so far as it relates to modification by the Welsh Ministers of Welsh legislation).

### Clause 11. Regulations

Regulations are to be made by SI. Affirmative procedure for regulations made under section 8 and 10 (where they amend, repeal or revoke any provision of primary legislation or retained direct principal EU legislation). All other regulations are negative procedure. Consent is required as this provision operates in conjunction with the substantive provisions of the Bill that require a legislative consent memorandum.

The remaining Clauses 12, 13, 14 and 15 are standard Bill provisions comprising interpretation, short title, commencement and extent.

### Schedule 1: The Advanced Research and Invention Agency

Describes the administrative structure and operation of the agency and the involvement of the Government Chief Scientific Adviser as a non-executive member. Consent is required – the Senedd has competence to make the same provisions in relation to a body that it creates. The appointment of the UK Government Chief Scientific Adviser as a non-executive member would be outside the competence of the Senedd, but the Senedd could appoint the Welsh Government equivalent to that office as a non-executive member of the body it creates.

### Schedule 2: Transfer schemes

The SoS may make property or staff transfer schemes. Consent is required – the Senedd may confer the power to make similar schemes on the Welsh Ministers.

### Schedule 3: Consequential amendments

This makes amendments to the following Acts and Regulations:-  
Public Records Act 1958; Parliamentary Commissioner Act 1967; House of Commons Disqualification Act 1975; Northern Ireland Assembly Disqualification Act 1975; Scotland Act 1998; Northern Ireland Act 1998; Equality Act 2010; Public Contracts Regulations.

14. The Bill amends GOWA 2006 by adding reference to ARIA to paragraph 87 of Part 2 of Schedule 7A, Section C11. Also it makes amendments to the table in Schedule 3A, adding ARIA to the UKRI and Research Councils, so that functions under section 5 of the Science and Technology Act 1965 are reserved to a Minister of the Crown and shall not be exercised concurrently with the Welsh

Ministers. Consent is not required to the amendments to UK-wide Acts and regulations, nor to the Acts of the Scottish Parliament and the Northern Ireland Assembly. Amendments to GOWA 2006 – with regard to the amendment to paragraph 87, whilst consent is not required on the basis that the Senedd has competence to legislate to make these provisions (paragraph 7(1) of Part 1 of Schedule 7B to GOWA), nevertheless it would amount to a modification of the Senedd's competence to make ARIA a specific reservation, and so consent of the Senedd is required on that basis (SO 29). With regard to the amendment to the Table in Schedule 3A, this does not require consent as it is not within the legislative competence of the Senedd (paragraph 7(1) of Part 1 of Schedule 7B to GOWA).

15. In adding ARIA to the reservation in Schedule 7A to GOWA, it will become a “particular authority” under paragraph 197 of Schedule 7A to GOWA. This would prevent the Senedd from legislating in respect of ARIA, including removing or modifying ARIA's functions.

### **Reasons for making these provisions for Wales in the ARIA Bill**

16. ARIA will be a new body with a UK-wide remit with the potential to fund advanced research and invention across the UK in a competitively awarded manner based on merit. It does not replace or duplicate any existing UK reserved body or any body established in Wales, and it would offer greater opportunity across the UK. However, the majority of the provisions of the ARIA Bill are within the legislative competence of the Senedd and the Bill does not as presently drafted provide for any influence over ARIA's activities by the devolved governments.

### **Welsh Government's Current Policy Position**

17. Our position is that we protect the powers of the Senedd. The ARIA Bill seeks to reserve a number of powers to UK Government with respect to research and innovation in Wales and we consider this is unacceptable.
18. In RD&I terms, the comparable UK-wide reserved body that exists currently is UK Research and Innovation (UKRI) with its Research Councils and Innovate UK. This body was established in 2018 by the Higher Education and Research Act 2017 (HERA 2017) as a reserved body for the UK and which has powers to fund research and innovation in Wales in parallel to the Welsh Government's ability to do the same. At the time, the argument was made by the devolved governments that the UKRI board should have representation from the devolved nations and although this was rejected for all the devolved nations, the legislation included provision that *'The Secretary of State must, in appointing the members of UKRI, have regard to the desirability of the members including at least one person with relevant experience in relation to at least one of Wales, Scotland and Northern Ireland.'* In the appointments made to the UKRI board, this has been observed with at least two members having knowledge of Wales, Scotland or Northern Ireland. However, in contrast to ARIA, HERA 2017 does

not make provision for the UKG CSA or any other UK Government official to be part of the UKRI board.

19. Having set the precedent of recognising the need for the board of UKRI to have knowledge of R&I in Wales under devolved arrangements, I do not think it is unreasonable to expect that similar provision should be implemented for ARIA and also given that ARIA provides for the UKG CSA to be a member. I will continue to press the UK Government for such amendments to be brought forward.

### **Financial implications**

20. There are currently no additional financial implications for the Welsh Government or the Senedd as a result of this Bill.

### **Conclusion**

21. In my view, it would not be appropriate for the Senedd to give its consent for this Bill for two reasons: first the reservation of new powers to the UK Parliament with respect to research and innovation is unacceptable; secondly the Bill makes no provision for the involvement of the devolved governments in the governance of ARIA. I have communicated this to the BEIS Minister and as no accommodation of our concerns have been forthcoming to date, I recommend that the Senedd does not give its consent in relation to this Bill in its current form.

**Vaughan Gething MS**  
**Minister for the Economy**  
**9 July 2021**