

Report on Supplementary Legislative Consent Memorandum (Memorandum No.4) for the Levelling-up and Regeneration Bill

September 2023

Overall conclusion

This is the Climate Change, Environment and Infrastructure Committee's third report on legislative consent memoranda for the Levelling-up and Regeneration Bill.

In our previous reports, we concluded we were not in a position to make a recommendation to the Senedd on the matter of consent, recognising inter-governmental negotiations on amendments to the planning data and Environmental Outcome Reports ('EOR') clauses to address concerns raised by the Welsh Government were on-going. Since then, amendments to address those concerns have been agreed at House of Lords Report Stage.

While we note the amendments, we have some outstanding concerns in relation to the above clauses. Given this, we are still not in a position to make a recommendation to the Senedd on the matter of consent.

We expect the Minister to respond to the recommendations in this report ahead of the Plenary debate on legislative consent.

Background

1. The Levelling-up and Regeneration Bill ('the Bill') was introduced in the House of Commons on 11 May 2022 by Michael Gove MP. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
2. Standing Order 29 provides that the Welsh Government must lay a legislative consent memorandum ('LCM') where a UK Bill makes provision in relation to Wales:



- (i) for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd);
- (ii) which modifies the legislative competence of the Senedd;

3. Standing Order 29 also provides that the Welsh Government must lay a LCM where an amendment to a UK Bill agreed to, or tabled/supported by the UK Government makes (or would make) relevant provision for the first time or beyond the limits of any consent previously given by the Senedd.

4. The Welsh Government has already laid three Memoranda (and a revised Memoranda) for the Bill. Details of those Memoranda, along with our reports on them, can be found on [Senedd Cymru's website](#).

5. The Welsh Government laid its Supplementary Legislative Consent Memorandum (Memorandum No.4) for the Levelling-up and Regeneration Bill ('SLCM4') on 16 August 2023.

6. The Business Committee referred SLCM4 to the Climate Change, Environment and Infrastructure Committee ('the Committee'), the Economy, Trade and Rural Affairs Committee, the Local Government and Housing Committee and the Legislation, Justice and Constitution Committee for scrutiny, with a reporting deadline of 13 October 2023.

7. The Committee considered SLCM4 at its meeting on 20 September 2023.

The Levelling-up and Regeneration Bill

Summary of the Bill

8. A summary of the Bill can be found in the revised LCM laid on 25 November 2022.

9. 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 purpose.

Policy objectives

10. According to the Bill's Explanatory Notes, the UK Government's aim "is to reverse geographical disparities between different parts of the United Kingdom by spreading opportunity more equally." The Bill has four overarching objectives:

- To place a duty on the UK Government to set and report annually on progress towards achieving 'levelling up' missions;
- To create a framework for a new model of combined county authorities so 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";
- To deliver powers for local authorities to regenerate towns through high street rental auctions and reforms to compulsory purchase; and
- To reform the planning system.

Supplementary LCM (Memorandum No.4)

11. SLCM4 relates to amendments to the Bill tabled in early July 2023 for consideration at House of Lords Report Stage, which have since been agreed.

12. The amendments of relevance to the Committee's remit which are of particular interest to us are those to Chapter 1 of Part 3 on planning data and Part 6 on Environmental Outcomes Reports ('EOR').

Part 3, Chapter 1 – Planning Data

13. As introduced, the planning data clauses provided power for the Secretary of State to make planning data regulations which contain provision within devolved competence, subject to consultation with the Welsh Ministers. Planning data regulations may require a relevant planning authority to comply with approved data standards published by the Secretary of State.

14. Paragraphs 31 to 37 of SLCM4 set out the amendments to the planning data clauses.

15. In summary, the effect of the amendments is that both the Secretary of State and the Welsh Ministers will have power to make planning data regulations. The Secretary of State and the Welsh Ministers can make regulations alone or jointly. In the case of regulations made by the Secretary of State, the following apply:

- before making regulations that include provision within devolved competence, the Secretary of State must obtain the Welsh Ministers' consent unless that provision is merely incidental to, or consequential on, provision that would be outside that devolved legislative competence; and
- before making regulations that include provision which confer a function on, or modify or remove a function of the Welsh Ministers or a devolved Welsh authority, the Secretary of State must consult the Welsh Ministers, unless that provision is contained in regulations which require consent (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.

Part 6 – Environmental Outcomes Reports

16. As introduced, the EOR clauses provided power for the Secretary of State to make EOR regulations which contain provision within devolved competence, subject to consultation with the Welsh Ministers. EOR regulations may specify outcomes relating to environmental protection in the UK or a relevant offshore area ('known as 'specified environmental outcomes').

17. Paragraphs 38 to 74 of the Supplementary LCM (Memorandum No.4) set out the amendments to the EOR clauses.

18. In summary, the effect of the amendments is that both the Secretary of State and the Welsh Ministers will have power to make EOR regulations. The Secretary of State and the Welsh Ministers can make regulations alone or jointly. In the case of regulations made by the Secretary of State, the following apply:

- before making regulations that include provision within devolved competence, the Secretary of State must obtain the Welsh Ministers' consent unless that provision is merely incidental to, or consequential on, provision that would be outside that devolved legislative competence; and
- before making regulations that include provision which confer a function on, or modify or remove a function of the Welsh Ministers or a devolved Welsh authority, the Secretary of State must consult the Welsh Ministers, unless that provision is contained in regulations which require consent (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.

19. In addition, the Welsh Ministers (along with the Secretary of State and other “appropriate authorities”) will be subject to certain requirements when making regulations, including ensuring non-regressions from existing environmental law standards, compliance with international agreements, and public consultation. The amendments also add additional legislation made in Wales to the list of legislation in relation to which EOR regulations may make provision.

Welsh Government’s position on consent

20. The Welsh Government previously expressed the view that the Welsh Ministers should have equivalent powers to the Secretary of State to make planning data and EOR regulations which contain provision within devolved competence. The Welsh Government recommended that consent be withheld on the basis that the relevant clauses as introduced failed to reflect devolved competence.

21. SLCM4 sets out the Welsh Government’s position on the amendments to the planning data and EOR clauses. According to the Welsh Government, the amendments “would prevent the Secretary of State from making regulations in devolved areas without the consent of the Welsh Ministers” and “provide the Welsh Ministers with 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”.

22. In addition, the Welsh Government states:

“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.”

We note the amendments made to the planning data and Environmental Outcomes Report (‘EOR’) clauses at House of Lords Report Stage.

It is unsatisfactory that substantive amendments have been made to these clauses (and to other clauses) at the end of the legislative process in the UK Parliament, with limited opportunity for this Committee to consider fully their implications for the development and delivery of future Welsh policy. We are aware there is now little, if any, prospect of the Welsh

Government negotiating further amendments to address any outstanding concerns we, or other Senedd committees, have on the clauses for which consent is being sought. Again, this is unsatisfactory.

The planning data and EOR clauses as amended are a marked improvement on those in the Bill as introduced. However, there are two points of concern that we would like the Minister to address ahead of the debate on legislative consent.

First, the Bill as amended (at House of Lords Report Stage) provides that, when making EOR regulations, the Welsh Ministers must have regard to the “current environmental improvement plan”, which is the UK Government’s long-term plan to improve the natural environment in England. In comparison, when making EOR regulations, the Scottish Ministers and the relevant Northern Ireland department must have regard to environmental improvement strategy/plan, as appropriate, for their respective nations. It is unclear whether, and if so why, the Welsh Government considers it appropriate for the Welsh Ministers to have regard to an environmental improvement plan that only applies to England when making EOR regulations in relation to Wales. We expect the Welsh Government to address this issue.

Second, the Secretary of State would still be able to make planning data and EOR regulations containing provision within devolved competence, subject to the Welsh Ministers’ consent. Any such regulations would by-pass Senedd scrutiny. Instead, scrutiny would be undertaken by the UK Parliament.

The First Minister has already made a commitment to notify the Senedd of when the Welsh Ministers intend to, or have given, consent to the use of ‘concurrent plus’ powers by the UK Government and, where time allows, provide the Senedd with an opportunity to express a view before consent is given. This falls short of enabling the Senedd to scrutinise regulations for Wales for matters within devolved competence. We would welcome further explanation from the Minister on why she considers the ‘concurrent-plus’ powers for planning data and EOR regulations appropriate. We would also welcome an explanation of the circumstances under which the Welsh Ministers would consent to the use of those powers.

Recommendation 1. The Minister should explain whether, and if so why, she considers the requirement in clause 157(5)(a) (in the Bill as amended in House of Lords Report Stage) to be appropriate, given that the UK Government’s current environmental improvement plan (under Part 1 of the Environment Act 2021) relates only to England.

Recommendation 2. The Minister should explain why she considers it appropriate for the Secretary of State to have powers to make planning data and EOR regulations containing provision within devolved competence.

Recommendation 3. The Minister should explain the circumstances under which the Welsh Minister would consent to the Secretary of State making planning data and EOR regulations containing provision within devolved competence.