

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.2)

ADVANCED RESEARCH AND INVENTION AGENCY BILL

1. This supplementary 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 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 with Lords Second reading on 2 November and Lords Committee Stage commenced on 17 November. On 10 November a number of amendments were tabled for consideration at Lords Committee Stage which the UK Government has yet to accept. The Bill, if passed, is expected to receive Royal Assent before the end of the year. The Bill can be found at: <https://bills.parliament.uk/bills/2836>
3. This Supplementary LCM considers only those amendments tabled by the UK Government on 10 November; it does not consider non-Government proposed amendments tabled on 10 November which will be considered separately if they are made part of the Bill.

Policy Objective(s)

4. 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.*”
5. The UK Research and Development Roadmap, published in July 2020, sets out the UK Government’s intention to confirm the UK’s position as a science superpower. The R&D Roadmap described the UK 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.
6. As the R&D Roadmap sets out, ARIA aims to pursue 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”.

Brief Summary of the Bill

7. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.
8. 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.
9. 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.

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

10. The UK Government has proposed specific amendments to the Bill to remove the amendment to the Government of Wales Act 2006 (GOWA 2006), which would have named ARIA in Schedule 7A, so that it would become a particular authority, the effect of which would be to reserve to the UK Government and UK Parliament ARIA's constitution and funding, and thereby to limit the Welsh Ministers' concurrent power (in relation to Wales) under section 5 of the Science and Technology Act 1965 (“the STA 1965”), in exchange for signature of a Memorandum of Understanding (“the MoU”) titled ‘*Agreement on the Independence of the Advanced Research and Invention Agency (ARIA)*’. The MoU is intended to establish the principle that governments of the UK will not interfere in ARIA's activities in their regions, and to provide for some level of oversight by the Devolved Governments' Chief Scientific Advisors (CSAs), although this is not a legally binding document.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required

11. The following amendment which makes provision in relation to Wales has been tabled by the UK Government. It is within the legislative competence of the Senedd and has been tabled for consideration during House of Lords Committee stage:

Amendment to ‘Schedule 3 Consequential Amendments’ in relation to the Government of Wales Act 2006: the main amendment related to this

supplementary LCM is the removal of the reservation of powers proposed in Schedule 3:

LORD CALLANAN: Page 13, leave out lines 15 to 30.

12. The Member's explanatory statement says: "*This amendment removes the amendments that would have treated the Advanced Research and Invention Agency as a reserved matter in relation to Wales and funding provided to it through the Science and Technology Act 1965 as outside the functions of the Welsh Ministers*".
13. ARIA is intended to be a UK-wide organisation, similar to UK Research and Innovation (UKRI) and its Research Councils. Originally, the Bill included 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 to the Government of Wales Act 2006, so that ARIA sits alongside UKRI and the Research Councils.
14. Following discussions and agreement in principle between the Minister for Economy and BEIS Minister for Science, Research and Innovation, it is proposed that an amendment to the Bill would remove the paragraphs from *Schedule 3 Consequential Amendments* which would make ARIA a "reserved matter" under the provisions of GOWA 2006. This was proposed by the Devolved Governments of Wales and Scotland in return for recommending that legislative consent is given for the Bill by the Senedd and Scottish Parliament; this was accepted by the BEIS Minister and amendments to this effect were proposed by UK Government, so they are likely to receive Government support.
15. Removing the proposed amendments to paragraph 1(2) of Schedule 3A of GOWA 2006 in the Bill would also mean that functions of the Welsh Ministers under section 5 of the STA 1965 will remain as concurrent functions (as they are currently) with the Secretary of State. 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.

Provisions in the Bill for which consent is required are described in the first LCM.

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 did not as originally drafted provide for any influence over ARIA's activities by the Devolved

Governments. This position has now changed with the removal of the amendments to GOWA 2006 and the separate agreement on the proposed MoU.

Welsh Government's Current Policy Position

17. Our position is that we protect the powers of the Senedd. The ARIA Bill as introduced sought to reserve a number of powers to UK Government with respect to research and innovation in Wales and we consider this is unacceptable. The removal of the amendment to GOWA 2006 preserves the powers of the Senedd and the Welsh Ministers as they exist at present, albeit with concurrent powers to fund RD&I in Wales extant from the STA 1965.
18. The removal of **the proposed new** reservation of powers satisfies one of our agreed principles for considering Senedd consent for UK Government Bills, i.e. that UK Parliament Bills should either protect or enhance the existing devolution settlement, rather than introducing new reservations.
19. It would normally be our view that concurrent functions should be removed at the first opportunity. While this would be desirable, I think it unlikely that the BEIS Secretary of State would agree to the removal of concurrent powers extant from the STA 1965. In our negotiations with the UK Government, I considered that a concession on the concurrent functions was acceptable in order to protect the Senedd's competence.
20. The original request for the involvement of the Welsh, Scottish and Northern Irish governments of the United Kingdom in ARIA has been met partially by the establishment of the MoU which gives some level of involvement in ARIA through the UK Government's CSA. We acknowledge this is weak in relation to our principles but it is a compromise position in order to secure the removal of the amendments to the reservations in GOWA 2006. Unusually, this MoU is being used to secure a commitment from the Welsh Government to persuade the UK Government to make a change on the face of the Bill. This is arguably a better use of a MoU than the typical aim of securing a UK Government commitment in lieu of a change on the face of a Bill. However, with more time, if BEIS were amenable, the MoU could also have been used to improve ARIA's governance significantly.
21. The UK Government's intention that ARIA will be independent of governments in its activities has been agreed in writing by me to Minister Freeman. Although arguably the proposals relating to the MoU are not as strong as we would wish, particularly as it is non-legally binding, it does reflect the intention that ARIA should be able to operate with relative freedom across the UK.
22. When this was agreed by me, there was limited time for the UK Government to bring forward requested amendments to the Bill. The second reading in the House of Lords took place on 2 November and amendments to the Bill were tabled on 10 November and as all three Devolved Governments have agreed to the proposals, the amendments are likely to be passed by the Lower House.

23. Although the MoU is not ideal, our overriding constitutional priority and benefit is to ensure that the proposed reservation is removed from the Bill. BEIS made it clear to me that this was contingent on agreeing the MoU. Furthermore, it is highly unlikely that BEIS will have any appetite to address the existing concurrent powers. As my main objective has been secured, I consider the proposal made by BEIS to be the best outcome that could be achieved and is a sensible compromise in the circumstances.
24. In RD&I terms, the 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, paragraph 2(6) of Schedule 9 to HERA 2017 provides 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 MoU presented to me, BEIS has stipulated that the UK Government CSA should engage his counterpart CSAs in the Devolved Governments as a means of communicating circumstances, priorities and strategies relevant to these countries so that at least some level of influence may be achieved in a manner reflecting HERA 2017.

Financial implications

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

Conclusion

26. In my view, it would be appropriate for the Senedd to give its consent for this Bill for two reasons: firstly, amendments to GOWA 2006 will be removed, preserving the current position in relation to bodies reserved under Section C11 of Schedule 7A to that Act – this is a good outcome for devolution for which I have fought; secondly, the MoU demonstrates the current intention of the UK Government to allow for at least some level of influence by the other governments in the governance of ARIA.
27. Therefore I recommend the Senedd supports this UK Government amendment to the ARIA Bill and gives consent on the condition that the specific amendment to the Bill in relation to the reservation of powers is made.

Vaughan Gething MS
Minister for the Economy
24 November 2021