

# Report on the Legislative Consent Memoranda for the Levelling-up and Regeneration Bill

## The Levelling-up and Regeneration Bill

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. The Welsh Government laid a Legislative Consent Memorandum (LCM) on the Bill before the Senedd on 28 September 2022.
3. Standing Order 29 provides that the Welsh Ministers must lay a Legislative Consent Memorandum ("LCM") where a 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); or
  - (ii) which modifies the legislative competence of the Senedd.
4. Standing Order 29.2(i) states that the LCM must be laid no later than two weeks after introduction. However, the LCM for the Bill was not laid until 28 September 2022.
5. The Minister for Climate Change wrote to the Llywydd on 24 May, explaining that due to the minimal engagement by the UK Government before the Bill's introduction and the complexity of the Bill, it took time to fully consider the devolution consequences of what was



being proposed. Consequently, laying the LCM within the normal two-week deadline was impossible.

**6.** The Business Committee referred the LCM to the Climate Change, Environment and Infrastructure Committee, the Economy, Trade and Rural Affairs (ETRA) Committee, the Local Government and Housing (LGH) Committee and the Legislation, Justice and Constitution (LJC) Committee with a reporting deadline of 8 December 2022.

**7.** On 22 November, Business Committee agreed to extend the reporting deadline to 16 February 2023. A revised LCM was laid on 28 November, and a supplementary LCM ("the SLCM") was laid on 30 November, with the same reporting deadline of 16 February.

## Policy objectives

**8.** Paragraph 1 of the Bill's Explanatory Notes states that 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.

## Committee consideration

**9.** This Report considers the provisions in the Bill for which consent is required that relate to matters within the Committee's remit. The remaining clauses for which consent is required (Part 1 – Levelling-up Mission and Part 10 – Miscellaneous, vagrancy and begging) will be considered by the relevant Senedd committees.

## Provisions in the Bill for which consent is required

### Planning, Part 3

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**10.** Paragraph 52 of the revised LCM states that planning is a devolved matter unless it relates to relevant nationally significant infrastructure projects; overhead electric lines other than devolved associated lines; or railways other than railways that start, end and remain in Wales.

### Environmental Outcomes Reports, Part 5, clauses 116-130

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**11.** The revised LCM in paragraph 53 states that:

*"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."*

### The Minister's view

**12.** The Minister notes in paragraph 62 of the revised LCM that: "Two areas, on planning data (clauses 75-77 and 79-81) and environmental outcome reports (clauses 116 - 130), have potential benefits for Wales, but their current drafting means this benefit cannot be realised." The Revised LCM concludes that:

*"The potential benefits cannot be realised as 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. This situation arises because as introduced the Secretary of State has the power to make environmental outcome report provision in respect of the whole UK, and clause 130(2) omits section 71A of the Town and Country Planning Act which is the current executive power of the Welsh Ministers to make provision in respect of the consideration of the likely environmental impacts of proposed development. This would remove the existing power to make provision in this area."*

## Overall conclusion

We note that at the time of consideration of this report, the Welsh Government was not in a position to recommend that the Senedd give consent to certain provisions in the Bill for which it believes consent is necessary. On the issue of environmental outcomes reports, the revised LCM states that the Minister is “open to persuasion on amendments to legislation in areas that would benefit Wales but would also protect our devolution settlement.”

The Committee is unable to come to a view on whether to recommend to the Senedd that it gives or withholds legislative consent until the Welsh Government is in a position to be able to provide further information.

We are disappointed that we find ourselves in this position once again. We have been consistent in our view when scrutinising other LCMs that in order to enable the Senedd to make an informed decision on legislative consent, the Welsh Government must fully explain the provisions and its reasons for seeking to introduce them via a UK Bill. Unfortunately, it has become the norm for LCMs to fall short in this regard. The LCM process, as it stands, is dysfunctional and unsustainable.