

The Welsh Government's Legislative Consent Memoranda on the Levelling-up and Regeneration Bill

February 2023



1. Background

1. The Levelling-up and Regeneration Bill¹ (the Bill) was introduced into the House of Commons on 11 May 2022. It is sponsored by the Department for Levelling Up, Housing and Communities.

2. The long title to the Bill states that it is a Bill to:

"make 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."

3. The UK Government states in its Explanatory Notes that "The Government's objective is to reverse geographical disparities between different parts of the United Kingdom by spreading opportunity more equally."²

4. At the time of agreeing our report, Committee Stage in the House of Lords was scheduled to commence on 20 February 2023.

5. References to provisions in the Bill are to the version of the Bill as introduced.

The Welsh Government's Legislative Consent Memorandum

6. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

7. In a letter to the Llywydd on 24 May 2022, Julie James MS, the Minister for Climate Change (the Minister) stated:

¹ Levelling-up and Regeneration Bill, as introduced (Bill 6)

² Levelling-up and Regeneration Bill, Explanatory Notes, May 2022, paragraph 1

"The Bill is lengthy and complex running to 338 pages, comprising 11 Parts and 17 Schedules. From our initial analysis, the Bill touches upon a number of areas of devolved competence and may modify Welsh Ministers' functions in reserved areas. However, due to very limited prior consultation by the UK Government and the complexity of the Bill, it has not yet been possible to fully consider the devolution consequences of what is being proposed.

*I intend to lay a Legislative Consent Memorandum and any other relevant statements before the Senedd as soon as we have a clear picture of the devolution consequences of the proposed legislation, however, it is clear this will be outside the normal two week Standing Order 29 deadline. The Bill is not expected to move through Parliament at pace. House of Commons second reading is scheduled to take place on 8 June, and, if passed, the Bill is not expected to receive Royal Assent until Spring 2023."*³

8. On 28 September 2022, the Minister, laid before the Senedd a Legislative Consent Memorandum (the initial Memorandum) in respect of the Bill.⁴

9. The Business Committee agreed that the Legislation, Justice and Constitution Committee, the Climate Change, Environment and Infrastructure Committee, the Economy, Trade and Rural Affairs Committee and the Local Government and Housing Committee should report on the initial Memorandum by 8 December 2022.⁵

10. The Local Government and Housing Committee wrote to the Minister on 1 November 2022⁶ asking for more information in two areas. It received a response on 10 November 2022.⁷

11. On 2 November 2022, we wrote to the Minister about the initial Memorandum, acknowledging the UK's Government's lack of engagement but stating:

"Nevertheless, we are concerned that some four months after the Bill's introduction into the UK Parliament, the content of the Memorandum laid before the Senedd is severely lacking in necessary detail that we do not

³ Letter from the Minister for Climate Change to the Llywydd, 24 May 2022

⁴ Welsh Government, Legislative Consent Memorandum, Levelling-up and Regeneration Bill, September 2022

⁵ Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Levelling-up and Regeneration Bill, October 2022

⁶ Letter from the Chair, Local Government and Housing Committee to the Minister for Climate Change, 1 November 2022

⁷ Letter from the Minister for Climate Change to the Chair, Local Government and Housing Committee, 10 November 2022

believe it would enable the Senedd to reach an informed view on the matter of whether or not to give consent.”⁸

12. As a result we asked 20 questions, seeking clarification on a range of matters and suggesting the Minister address them in a revised Memorandum. We received a response from the Minister on 25 November 2022,⁹ which included the responses to our questions and the following comments on engagement with the UK Government:

“I too share your frustration over the lack of engagement from the UK Government on areas within the Bill prior to its introduction. Whilst engagement has improved it remains disappointing that there are areas in the Bill for which we have little detail and placeholder clauses remain. This has complicated not only the devolution assessment of the provisions and their effect upon Wales, but also negotiations over potential amendments. I acknowledge the importance of the Senedd's scrutiny role in the legislative consent process and accept that this in turn limited the ability of all four responsible committees to carry out meaningful scrutiny of the LCM.”

13. On 25 November 2022, the Minister laid a revised Memorandum (the revised Memorandum) before the Senedd.¹⁰ Subsequently, the Business Committee agreed a revised deadline for reporting of 16 February 2023.¹¹

Provisions for which the Senedd's consent is required

14. Paragraphs 9 to 43 of the revised Memorandum detail the “clauses with particular relevance to matters within the legislative competence of the Senedd”,¹² namely:

- Part 1 (Levelling-up missions): clauses 1 – 6;
- Part 3 (Planning):
 - Chapter 1 (Planning data): clauses 75 to 77 and 79 to 81;

⁸ Letter to the Minister for Climate Change, 2 November 2022

⁹ Letter from the Minister for Climate Change, 25 November 2022

¹⁰ Welsh Government, Revised Legislative Consent Memorandum, Levelling-up and Regeneration Bill, November 2022

¹¹ Business Committee, Revised timetable for consideration: Legislative Consent Memorandum on the Levelling-up and Regeneration Bill, November 2022

¹² Revised Memorandum, paragraph 8

- Chapter 4 (Grant and implementation of planning permission): clause 96;
- Chapter 6 (Other provision): clause 112;
- Part 5 (Environmental outcome reports): clauses 116-130;
- Part 10 (Miscellaneous): clauses 186 – 187; and
- Part 11 (General): clause 191.

15. The revised Memorandum identifies substantive areas within the Senedd's legislative competence that the UK Government considers require the consent of the Senedd. They are:

- Part 3 (Planning):
 - Chapter 1 (Planning data);
 - Chapter 6 (Other provision); clause 112;
- Part 5 (Environmental outcomes reports); and
- Part 10 (Miscellaneous), clause 186.¹³

16. In the Explanatory Notes to the Bill,¹⁴ the UK Government identifies the whole of Chapter 1 of Part 3 as needing consent, whereas the Welsh Government does not specify clause 78 as a provision for which consent is sought, as, in its view, the clause applies to England only.¹⁵

17. The revised Memorandum identifies minor or consequential areas within the Senedd's legislative competence that the UK Government considers require the consent of the Senedd.¹⁶ The revised Memorandum states:

"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:

¹³ Revised Memorandum, paragraphs 57 to 58

¹⁴ Levelling-up and Regeneration Bill, Explanatory Notes, May 2022, paragraphs 68-78 and Annex A - Territorial extent and application in the United Kingdom

¹⁵ Letter from the Minister for Climate Change, 25 November 2022, paragraph 4.1

¹⁶ Revised Memorandum, paragraphs 57 and 59

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.¹⁷

18. The UK Government is of the view that Part 1 (Levelling-up missions) does not engage the Senedd's legislative consent process.

The Welsh Government's position

Part 1 of the Bill

19. The Welsh Government considers that the purpose of the provisions in Part 1 (Levelling-up missions) does not relate to any reserved matters under the *Government of Wales Act 2006* (the 2006 Act).¹⁸ The Minister states in the revised Memorandum that:

"This Bill, if passed as introduced, would require future UK Governments to set longer term missions across a wide range of devolved matters, and actions to deliver against these missions could materially interfere with the policy objectives of the Welsh Government.

It is our 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,

¹⁷ Revised Memorandum, paragraph 59. See also Levelling-up and Regeneration Bill, Explanatory Notes, May 2022, paragraph 71 and paragraph 1538 in Annex A - Territorial extent and application in the United Kingdom

¹⁸ Revised Memorandum, paragraph 49

scrutiny, review etc. obligations as set out in Part 1 of the Bill. Therefore, it is our view that Part 1 of the Bill would require the consent of the Senedd.

This is because the objective of "levelling-up" to significantly reduce geographical disparity in the UK is not a reserved matter. Whilst the Welsh Ministers would not introduce legislation in respect of England, the Senedd would have legislative competence to legislate to achieve the same outcome of "levelling-up" for Wales."¹⁹

20. In addition, the Minister notes that the *Well-being of Future Generations (Wales) Act 2015* already provides for some of the provisions in clauses 1 to 6 of the Bill, including for annual reporting, indicators and milestones, and the setting of objectives to shape delivery.²⁰ The Minister concludes:

"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. I do not recommend the Senedd consents to these provisions and cannot support Part 1 of the Bill."²¹

21. We asked the Minister to provide more information as to the reason for the disparity in the views of the Welsh Government and the UK Government regarding the need for consent for these provisions. The Minister told us:

"UK Government are of the view that Part 1 of the Bill does not require the legislative consent of the Senedd via a Legislative Consent Motion. The UK Government state that Part 1 does not modify the executive competence of the Welsh Ministers or the legislative competence of the Senedd, but do not address whether or not Part 1 makes provisions 'for any purpose within the legislative competence of the Senedd'. The UK Government is of the view that the UK Parliament can legislate to place duties upon the UK Government Ministers to set missions for the whole of the UK.

¹⁹ Revised Memorandum, paragraphs 46-48

²⁰ Revised Memorandum, paragraph 50

²¹ Revised Memorandum, paragraph 51

Welsh Government officials have met with officials from the Department for Levelling Up, Housing and Communities, and will continue this engagement as the Bill progresses.”²²

Parts 3 and 5 of the Bill: general provisions

22. As regards the Welsh Government's view on the planning provisions in the Bill, the Minister states in the revised Memorandum:

“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. In terms of benefits, the current system of environmental assessment is complicated across sectors and devolved areas. I therefore see the potential benefits of an improved system of environmental outcome reports. This new system would avoid contradictions and uncertainty in the law and enable smooth consent routes for cross jurisdictional schemes. 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)²³ 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.

There are also benefits to a digital service design of planning, making the system easier to use, enable developers to work more efficiently across different authorities and, make it easier for the public to compare data across different authority areas. It would also facilitate growth and competition in the planning data software market through the creation of a common standard which suppliers would work to. Again, the current drafting of powers on planning data (clauses 75-77 and 79-81) does not accord with our desire to legislate for Wales. The current provisions would mean the Secretary of

²² Letter from the Minister for Climate Change, 25 November, paragraphs 1.6 and 1.7

²³ Clause 128(2) as introduced

*State would legislate for Wales in some circumstances and no powers are provided to the Welsh Ministers to make provision to regulate the processing of planning data by Welsh planning authorities in other circumstances."*²⁴

23. We asked the Minister about the phrase "the current drafting of powers on planning data (clauses 75-77 and 79-81) does not accord with our desire to legislate for Wales"²⁵ and specifically in what way the current drafting of the Bill has this effect. The Minister replied:

*"The drafting in the Bill as introduced for the planning data provisions in Chapter 1 of Part 3 enables the Secretary of State to make regulations in respect of planning data requirements for environmental outcome reports. In line with our principles for consenting to UK Bills, I consider the Welsh Ministers should have equivalent powers to make regulations in respect of environmental outcome reports for devolved plans and projects, which would consequentially require similar powers in relation to planning data. The Bill, as introduced, does not give the Welsh Ministers those powers."*²⁶

24. We also asked the Minister to provide further detail about the new powers that are provided to the Secretary of State by Chapter 1 of Part 3 and clause 112 and to confirm what effect these powers would have in Wales, including any effect on the legislative competence of the Senedd and the executive competence of the Welsh Ministers. In response the Minister said:

"The planning data provisions in Chapter 1 of Part 3 of the Bill are intended to set approved data standards so that data held by relevant planning authorities is directly comparable. This would enable developers to work more efficiently across different authorities and, make it easier for the public to compare data across different authority areas. It would also facilitate growth and competition in the planning data software market through the creation of a common standard which suppliers would work to, enabling cross-boundary matters to be dealt with more efficiently.

The vast majority of 'relevant planning authorities', as defined in clause 81 of the Bill, capture bodies operating in England, or in non-devolved areas. The only area within the legislative competence of the Senedd that will be affected by any planning data regulations will be in respect of any Environmental

²⁴ Revised Memorandum, paragraphs 62-63

²⁵ Revised Memorandum, paragraph 63 (initial Memorandum, paragraph 59)

²⁶ Letter from the Minister for Climate Change, 25 November, paragraph 8.1

Outcomes Report Regulations made under Part 5 of the Bill. As drafted in the Bill as introduced, it would be the Secretary of State who would be making such Environmental Outcomes Reports Regulations ("EOR Regulations"), however negotiations are ongoing in respect of the Welsh Ministers having equivalent powers in devolved areas. We will ensure that the operation of these clauses relating to planning data are considered in the negotiations in respect of Part 5. As drafted in the Bill as introduced these provisions fall within the legislative competence of the Senedd to the extent they cover matters under Environmental Outcome reports. There is no effect on the legislative competence of the Senedd and no impact on the executive competence of the Welsh Ministers. (...)

Clause 114 (Previously Clause 112) (regulations and orders under the Planning Acts) is merely a clarificatory amendment, providing an express power to make ancillary provision rather than having to rely on implied powers. There is therefore no substantive change. The provisions affect the executive competence of the Welsh Ministers to make regulations and orders under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990. However, as stated there is no change to the Welsh Ministers' functions."²⁷

25. We asked the Minister to seek confirmation from the UK Government as to how the planning provisions will work in practice, to include providing an analysis of the clauses in relation to planning and explaining how Welsh authorities will be impacted by the provisions of the Bill in real terms. In response the Minister said:

"The provisions in Chapter 1 of Part 3 of the Bill as introduced primarily apply in relation to England and only apply in Wales in two limited circumstances. Firstly, in relation to the Secretary of State acting in non-devolved areas, for example National Strategic Infrastructure Projects (NSIPs). Secondly, in respect of the Secretary of State's functions under Part 5 of the Bill (Environmental Outcome Reports).

The provisions in Part 5 are currently being negotiated with UK Government. As such, we are unable to confirm who, in Wales, could be considered a

²⁷ Letter from the Minister for Climate Change, 25 November, paragraphs 6.1-6.2 and 6.4

'relevant planning authority' for the purposes of this Chapter, as this will depend on the outcome of those negotiations.

*Similarly, it is difficult at present to outline how the provisions will work in practice. This is dependent on the type of regulation the UK Government proposes to bring forward, by way of tabled amendment, of which we have no detail at this current time."*²⁸

26. As regards Part 5 of the Bill, the Minister states in the revised Memorandum:

*"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. For example, reservation 184 of Schedule 7A to GoWA (planning), although provision could be made in relation to other planning matters and infrastructure projects that fall below the thresholds for nationally significant infrastructure projects (NSIP). Other examples of relevant reservations include reservations 97 (oil and gas) and reservation 99 (nuclear energy). Despite the existence of relevant reservations, substantive provision could still be made in devolved areas including planning, transport, water, agriculture, land drainage and others. 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."*²⁹

27. Paragraph 53 of the revised Memorandum was also covered in the Minister's letter of 25 November 2022 as part of her response to a question about Part 5 of the Bill. In that response the Minister referred to the following provisions within Part 5 as relating to devolved matters:

"The provisions that could be included in EOR Regulations cover a wide range of areas, both in terms of defining 'relevant consents' and 'relevant plans'. Examples of existing regulations relating to environmental impact assessments which apply solely in Wales include agriculture (e.g., the

²⁸ Letter from the Minister for Climate Change, 25 November, paragraphs 12.1-12.3

²⁹ Revised Memorandum, paragraph 53

*Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017) and planning (e.g., the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017). Other examples of existing provisions are listed in clause 130 of the Bill as "existing environmental protection legislation". We will work with the UK Government to ensure all relevant Wales only legislation is also included."*³⁰

28. We asked the Minister to explain the reasoning behind her statement that "Two areas, on planning data ... and environmental outcome reports ..., have potential benefits for Wales, but their current drafting means this benefit cannot be realised."³¹ The Minister responded by saying:

"In respect of planning data, as explained in paragraph 6.1 above, common data standards would enable developers to work more efficiently across different authorities and, make it easier for the public to compare data across different authority areas. It would also facilitate growth and competition in the planning data software market through the creation of a common standard which suppliers would work to.

The repeal of the European Communities Act 1972 means the Welsh Ministers no longer have regulation making powers in respect of strategic environmental assessment and environmental impact assessment. The only exception to this is section 71A of the Town and Country Planning Act 1990 which this Bill would repeal. We are therefore unable to improve the operation of these regimes, for example, in respect of electronic communications, or the types of projects which should be subject to assessment.

The drafting in the Bill as introduced for both the planning data provisions and environmental outcome reports does not provide the Welsh Minister with regulation making powers. We will therefore be unable to make any changes to improve how the provisions work and there would remain the risk that the Secretary of State makes regulations affecting Wales that undermine the

³⁰ Letter from the Minister for Climate Change, 25 November, paragraph 13.1

³¹ Revised Memorandum, paragraph 62 (initial Memorandum, paragraph 58)

current approach in these areas, which are specifically tailored to the circumstances and needs of Wales."³²

29. The Minister told us that discussions have taken place between officials in the Welsh and UK Governments with a view to realising the potential benefits.³³

Parts 3 and 5 of the Bill: delegated powers

30. Clauses 80 and 121 of the Bill state that the Secretary of State may only make planning data regulations or environmental outcome report regulations which contain provision within Welsh devolved competence (as defined in clauses 80(4) and 121(4) respectively) following consultation with the Welsh Ministers.

31. In her letter of 25 November 2022, the Minister states:

*"Discussions between officials are exploring the possibility of equivalent powers for the Welsh Ministers to make EOR Regulations in general for devolved plans and projects from the starting point the Bill as introduced is unacceptable in relation to the Secretary of State being able make regulations in devolved areas. Discussion on possible alternative clauses for clauses 80 and 123 (previously 121) to overcome these objections has not taken place. I await sight of any proposed replacement clauses that better reflect Welsh devolved competence. Unless and until such new clauses are produced, my recommendation remains that legislative consent should be withheld to the provisions on planning data regulations and environmental outcome reports."*³⁴

32. Clause 129 of the Bill contains a significant enabling power for the UK Government to make environmental outcomes report regulations which amend any Welsh legislation, including Acts of the Senedd (subject to the affirmative procedure in such circumstances), with only a requirement to consult the Welsh Ministers if clause 121 applies. This constitutes a Henry VIII power.

33. In her letter of 25 November 2022, the Minister states:

³² Letter from the Minister for Climate Change, 25 November, paragraphs 7.1-7.3

³³ Letter from the Minister for Climate Change, 25 November, paragraph 14.1

³⁴ Letter from the Minister for Climate Change, 25 November, paragraph 18.1

*"Clause 129 is unacceptable in my view, in that it is part of the environmental outcome report provisions on which I have provided my view above (see paragraph 9.1). There has been no ministerial discussion about these provisions to date. Now that the rearrangement of portfolios within UK Government has settled, I will be seeking to meet my counterpart at the earliest opportunity."*³⁵

Parts 3 and 5 of the Bill: the Minister's view on whether the Senedd's consent should be provided

34. The Minister states at paragraph 77 in the revised Memorandum:

"I recommend consent should be withheld to those clauses of Chapter 1 of Part 3 that are within the legislative competence of the Senedd (clauses 75, 76, 77, 79, 80 and 81) because they directly relate to the operation of environment outcome reports provided for in Part 5. I cannot support the current approach in Part 5 because of the risk of regulations affecting Wales that undermine the current approach in these areas, which are specifically tailored to the circumstances and needs of Wales."

35. However, the Minister goes on to state:

*"However, on the clauses identified in paragraph 77 which I do not currently support, I am open to persuasion on amendments to legislation in areas that would benefit Wales but would also protect our devolution settlement."*³⁶

36. The Minister recommends that the Senedd consents to clause 112 on the grounds that it relates to a "technical legal amendment", adding:

*"While it is possible for the Senedd to make this change, the minor technical nature of the change means in my view the benefit of effecting the change through this Bill outweigh the policy presumption against doing so."*³⁷

Part 10 of the Bill

37. Clause 186 will enable the Secretary of State to commission periodic reviews of the Royal Institute of Chartered Surveyors (RICS), a professional body for surveyors operating with a Royal

³⁵ Letter from the Minister for Climate Change, 25 November, paragraph 19.1

³⁶ Revised Memorandum, paragraph 81

³⁷ Revised Memorandum, paragraph 79

Charter. The Minister notes in the revised Memorandum that surveyors (and chartered surveyors) are not professions listed as a reserved matter in paragraph 140 of Schedule 7A to the 2006 Act³⁸ and states:

*"I support the inclusion of clause 186 as this supports the improvement of RICS, which will in turn assists 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."*³⁹

Part 11 of the Bill

38. Clause 191 provides a power to make consequential amendments by regulations, including to primary legislation (subject to the affirmative procedure in such circumstances), making it a Henry VIII power. There is no such power for the Welsh Ministers under the Bill.

39. The power in clause 191 would enable the UK Government to amend any legislation that applies to Wales, including Acts of the Senedd, without reference to the Welsh Ministers or the Senedd.

40. The Minister stated that the provision is within the legislative competence of the Senedd so far as it relates to the substantive provisions which are also within the legislative competence of the Senedd⁴⁰ and recommends that:

*"... consent should be withheld for clause 191 due to the lack of equivalent powers for the Welsh Ministers to make regulations in respect of devolved matters."*⁴¹

The Welsh Government's Supplementary Legislative Consent Memorandum

41. On 16 and 18 November 2022 the UK Government tabled amendments for consideration at Report Stage in the House of Commons. The Welsh Government laid a Supplementary

³⁸ Revised Memorandum, paragraph 54

³⁹ Revised Memorandum, paragraph 75

⁴⁰ Revised Memorandum, paragraph 56

⁴¹ Revised Memorandum, paragraph 80

Legislative Consent Memorandum (Memorandum No. 2) in respect of these amendments on 30 November 2022.⁴²

Provisions for which the Senedd's consent is no longer required

42. The Minister notes that two UK Government amendments affect provisions contained within the Bill as introduced that fell within the legislative competence of the Senedd: clause 96 and clause 187. The consequence of these amendments is that clause 96, originally a placeholder clause, only applies to England and clause 187 has been removed from the Bill. As such the Minister states that the legislative consent process under Standing Order 29 is no longer engaged for these clauses.⁴³

Provisions for which the Senedd's consent is required

43. A third UK Government amendment—NC60 (Street votes: community infrastructure levy)⁴⁴—makes provision which falls within the legislative competence of the Senedd. The Minister states that the new clause proposed by the amendment will make technical and clarifying legal amendments to section 211(10) (Part 11) of the *Planning Act 2008*⁴⁵ and adds:

*"We are satisfied that these amendments do not relate to any of the reserved matters set out in Schedule 7A to Government of Wales Act 2006 (GoWA), nor do any of the restrictions listed in Schedule 7B to GoWA apply. Therefore, these amendments are within the legislative competence of the Senedd. This position is agreed by UK Government, and it is seeking the consent of Senedd Cymru, which I recommend is granted."*⁴⁶

The Welsh Government's position

44. The Minister states at paragraph 25 of Memorandum No. 2:

"I recommend the consent of the Senedd should be given to UK Government Amendment NC60, as the amendment makes minor technical and clarifying changes only. While it is possible for the Senedd to make the changes, their

⁴² Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2), The Levelling-up and Regeneration Bill, 30 November 2022

⁴³ Memorandum No. 2, paragraphs 13-16

⁴⁴ Levelling-up and Regeneration Bill. Report stage. Amendment number: NC60

⁴⁵ Memorandum No. 2, paragraph 18

⁴⁶ Memorandum No. 2, paragraph 19

minor technical nature means in my view the benefit of effecting the changes through this Bill outweigh the policy presumption against doing so."

2. Committee consideration

45. We considered the Memoranda at our meetings on 24 October 2022, 12 December 2022 and 6 February 2023, and we agreed our report on 13 February 2023.

Our view

General observations

46. We note the Minister's comments suggesting the lack of engagement from the UK Government on the Bill prior to its introduction, a point the Minister again highlighted in her letter to us of 25 November 2023, although acknowledging that some improvement has taken place.

47. We are disappointed with the lack of engagement from the UK Government on this Bill as suggested by the Minister. This is surprising given our exchange of correspondence in the summer of 2022 with the then Secretary of State for Levelling Up, Housing and Communities, the Rt Hon Greg Clarke MP, who highlighted the importance of engagement taking place during the legislative consent process.⁴⁷

48. We agree with the Minister that this is a complex Bill to consider in terms of its impact on devolution. We therefore sympathise with the time it took to prepare the initial Memorandum. However, we remain disappointed that it was necessary to write to the Minister seeking answers to 20 questions and to request a revised Memorandum. As the discussion below indicates, some of the answers we received do not explain matters as fully as we would have liked, with the result that some matters remain unclear.

49. The situation that has arisen (as we highlight in paragraphs 46 to 48) has reduced the time available to us to undertake the detailed scrutiny necessary of a Memorandum for a Bill which is not easily understood given the complex way it impacts on the devolution settlement.

50. The revised Memorandum identifies 32 clauses as having "particular relevance" to matters within the legislative competence of the Senedd. The revised Memorandum does not specify

⁴⁷ Letter to the Secretary of State for Levelling Up, Housing and Communities, 20 July 2022; Letter from the Secretary of State for Levelling Up, Housing and Communities, 30 August 2022

what is meant by the term “particular relevance” but we base our report on the assumption that the clauses identified are clauses which the Welsh Government considers either:

- make provision in relation to Wales for any purpose within the legislative competence of the Senedd, or
- modify the legislative competence of the Senedd.

51. As regards Part 1 of the Bill on levelling-up missions, we note the difference in views between the Welsh Government and the UK Government as to whether clauses 1 to 6 require the consent of the Senedd.

52. A majority of the Committee agree with the Minister's assessment regarding Part 1 of the Bill. It follows therefore that a majority of the Committee does not agree with the UK Government's view (provided to us by the Minister) that the Senedd's consent is not required before the UK Parliament legislates to place duties upon the UK Government Ministers to set levelling-up missions for the whole of the UK, and by implication Wales.

53. A majority of the Committee consider that the approach being proposed by the UK Government could potentially blur the boundaries of devolution causing unnecessary confusion for the public. It could also lead to policies adopted in devolved areas by different governments being in conflict, with the result that resources are used inefficiently and for competing priorities. In this regard we note the comments of the Minister highlighting that the *Well-being of Future Generations (Wales) Act 2015* already provides for some of the provisions which appear in clauses 1 to 6 of the Bill.

Conclusion 1. A majority of the Committee agree with the Minister that clauses 1 to 6 in Part 1 of the Bill fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

Conclusion 2. We agree with the Minister's assessment that clauses 75 to 77, 79 to 81, 112, 116 to 130, 186 and 191 to the Bill (as introduced) fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

Conclusion 3. We agree with the Minister's assessment that UK Government amendment NC60 (Street votes: community infrastructure levy) falls within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore requires the consent of the Senedd.

54. We note that paragraph 59 of the revised Memorandum identifies provisions within the Bill that apply in Wales but only to amend legislation for the purpose of restating the existing position in Wales. We further note that the UK Government considers that these provisions require the Senedd's consent and we agree with that view. However the revised Memorandum does not state whether or not the Welsh Government is content with these provisions being included in this Bill nor does it make any recommendation as to whether the Senedd should consent to these provisions.

Recommendation 1. The Minister should confirm whether the clauses identified in paragraph 59 of the revised Memorandum require the consent of the Senedd and, if not, why the Welsh Government has a different view from the UK Government.

Parts 3 and 5 of the Bill

55. Through questions 6, 7, 12 and 13 of our letter of 25 November 2022 we sought to gain a better and more definitive understanding of how the Secretary of State could act in devolved areas as a result of provisions in Part 3 and 5 of the Bill.

56. In our view, the responses from the Minister do not provide the level of detail necessary to assess the impact of the Bill in devolved areas. As such, without further clarification, it would be difficult for the Senedd to determine what the impact would be of the provisions for which consent is being requested.

57. We are concerned that the Minister is not able to "confirm who, in Wales, could be considered a 'relevant planning authority' for the purposes of" Chapter 1 of Part 3 of the Bill (see paragraph 25 above) and the Minister has not provided any further updates on this point.⁴⁸

58. In addition, we are uncertain about the meaning of the Minister's reference to working "with the UK Government to ensure all relevant Wales only legislation is also included" (see paragraph 27 above). In particular it is unclear whether the Minister is seeking to include all "relevant Wales only legislation" in clause 130 of the Bill and if so, the reason for seeking those amendments and the practical implications of those changes.

59. We also would welcome the Minister clarifying whether she has made representations to the UK Government about the proposed omission of section 71A of the *Town and Country Planning Act 1990* by clause 128(2)⁴⁹ given that it includes the current executive power of the

⁴⁸ Letter from the Minister for Climate Change, 25 November 2022, paragraph 12.4

⁴⁹ Referred to as Clause 130(2) in paragraph 62 of the revised Memorandum

Welsh Ministers to make provision in respect of the consideration of the likely environmental impacts of proposed development.

60. We note that the Minister has also acknowledged that she is “open to persuasion on amendments to legislation in areas that would benefit Wales but would also protect our devolution settlement.” Given the Minister’s acknowledgement that some of these matters could be dealt with in Senedd Acts, we remain unclear why she is taking this approach rather than asking that the relevant provisions be restricted to England only.

61. This point is particularly important because any amendments to the Bill to provide executive powers to the Welsh Ministers would occur at the end of the legislative process in the UK Parliament (the Bill is at Committee Stage in the second House) and therefore likely to receive minimal scrutiny through the legislative consent process, which is itself limited as a means of Senedd committees and the Senedd influencing legislation in the UK Parliament.

62. In our view, as a matter of principle, any potential benefits for Wales on planning data provisions and environmental outcome reports would be best realised through a Welsh Government Bill subject to full scrutiny by the Senedd, rather than negotiations between the Welsh and UK Governments and the tabling of UK Government amendments at the latter stages of the legislative process in the UK Parliament.

63. We note and share the concerns of the Minister regarding clauses 80, 121 and 129 of the Bill. In particular, we are concerned that clause 129 permits the amendment of an Act or Measure of Senedd Cymru, without any role for the Senedd. We do not consider this to be acceptable. This is the majority view of the Committee.

64. We note the Minister’s comments regarding clause 112 in the revised Memorandum and amendment NC60 (Street votes: community infrastructure levy) relating to planning matters. `

65. Overall a complicated and confused picture has emerged from the Memoranda and Ministerial correspondence in relation to both the impact of the Bill (as drafted) on Wales and how the Bill might be amended to overcome the Welsh Government’s concerns.

Recommendation 2. The Minister should explain why she is seeking amendments to the Bill to seek executive powers for the Welsh Ministers in relation to planning data provisions and environmental outcome reports rather than negotiating that those provisions apply to England only.

Recommendation 3. The Minister should clarify whether it would be possible for the Welsh Government to bring forward its own Bill covering planning data provisions and / or environmental outcomes reports, and if not what the barriers are to such an approach.

Recommendation 4. The Minister should provide an update on who, in Wales, the Welsh Government considers could be a 'relevant planning authority' for the purposes of Chapter 1 of Part 3 of the Bill.

Recommendation 5. The Minister should clarify what is meant by the sentence "We will work with the UK Government to ensure all relevant Wales only legislation is also included" in paragraph 13.1 of her letter of 25 November 2022. In so doing, she should explain the practical effect of the change she appears to be seeking to clause 130 of the Bill (as introduced).

Recommendation 6. The Minister should clarify whether she has sought to reverse the provision in clause 128(2) (as introduced) omitting section 71A of the *Town and Country Planning Act 1990*, which includes the current executive power of the Welsh Ministers to make provision in respect of the consideration of the likely environmental impacts of proposed development. If not, the Minister should explain the reasons why.

Recommendation 7. The Minister should state whether clause 112 (as introduced) and amendment NC60 (Street votes: community infrastructure levy) will have an impact on the drafting of the Consolidation Bill on planning law which we are aware the Welsh Government is preparing for introduction to the Senedd.

Parts 10 and 11 of the Bill

66. We note the Minister's comments on clause 186 of the Bill.

67. We note and share the concerns of the Minister regarding clause 191 of the Bill. We are concerned that it permits the amendment of an Act or Measure of Senedd Cymru, without any role for the Senedd. We do not consider this to be acceptable. This is the majority view of the Committee.

Updates

Recommendation 8. The Minister should provide the Committee with an update regarding her negotiations with the UK Government about all provisions of the Bill for which she is recommending consent is withheld.

Recommendation 9. The Minister should respond to all recommendations within 14 days of the laying of this report.