

Levelling-up and Regeneration Bill:

Report on the Revised and Supplementary Legislative Consent Memoranda

February 2023

Introduction

1. The Welsh Government laid a Legislative Consent Memorandum (LCM) (PDF 161KB) on the Bill before the Senedd on 28 September 2022. The Business Committee referred the LCM to the Climate Change, Environment and Infrastructure Committee (CCEI), the Economy, Trade and Rural Affairs Committee (ETRA), the Local Government and Housing Committee (LGH) and the Legislation, Justice and Constitution Committee (LJC) on 4 October 2022, with a reporting deadline of 8 December 2022. On 22 November, the Business Committee agreed to extend the deadline to 16 February 2023.
2. The Welsh Government laid a revised LCM (PDF 179KB) on 25 November 2022. On 30 November 2022, the Welsh Government laid a Supplementary LCM (SLCM) (PDF 83.2 KB), and the Business Committee agreed (PDF 39.5KB) a reporting deadline for the Revised LCM and SLCM of 16 February 2023. This Committee considered the Revised LCM and SLCM on 12 January 2023.



Background

3. 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.

4. The Bill has progressed through the House of Commons and at time of writing is moving to Committee stage in the House of Lords. Following the Welsh Government laying the revised LCM and SLCM, an updated version of the Bill (as brought from the Commons) was published on 19 December 2022.

5. The long title of the Bill, as introduced, 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.”

6. Paragraph 1 of the Explanatory Notes states that the UK Government’s objective is *“to reverse geographical disparities between different parts of the United Kingdom by spreading opportunity more equally.”*

Overview of the Bill

7. The Bill, at introduction, had 196 clauses and 17 schedules and was divided into 11 parts. At the date of consideration by the Committee the Bill has 199 clauses. Unless otherwise stated, references to provisions in the Bill in this report are to the version of the Bill as introduced.

8. As stated in Paragraph 5 of the revised LCM, the Bill has four over-arching objectives:

- i. To place a duty on the UK Government to set, and report annually on progress towards achieving, levelling up missions to reduce geographical disparities across the United Kingdom;

- ii. To create a modern framework to support the most radical devolution of powers in modern times through the creation of a new model of combined county authorities to support delivery of the UK Government's levelling up mission 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';
- iii. To deliver a new suite of powers for local authorities to regenerate their towns through high street rental auctions and reforms to compulsory purchase to support delivery of the UK Government's levelling up mission that 'by 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between top performing and other areas closing'; and
- iv. To create a planning system which delivers more beautiful and greener homes, with the associated infrastructure and democratic support that neighbourhoods want and deserve.

Consideration by other Senedd Committees

9. As noted above, the LCMs relating to this Bill have been referred to four Senedd Committees for scrutiny. This Committee has noted copies of correspondence between the Minister and other Committee Chairs on issues relating to the Bill, but in light of other legislative priorities, has been unable to undertake detailed scrutiny of the LCM, revised LCM or SLCM in its work programme.

10. This report deals with those aspects of the Bill that fall within the 'economic policy' remit of this Committee, which is primarily Part 1 of the Bill (Levelling-up Missions), and Environmental Outcomes Reports (Part 5), clauses 116-130. Matters in the Bill relating to planning and local democracy fall more squarely within the remit of the Senedd's CCEI and LGH Committees, and so are not included in detail in this Committee's report.

11. The LJC Committee considered the LCM laid in September at its meeting on 24 October 2022 and the Chair wrote to the Minister on 2 November expressing concern that the LCM was *"severely lacking in necessary detail to enable the Senedd to reach an informed view on the matter of whether or not to give consent."*

12. An annex to the letter contained 20 questions seeking clarification on a range of matters, and suggested a revised LCM be laid. In a response dated 25 November the Minister committed to laying a revised LCM and addressed the questions raised, where she was able to.

13. The LGH Committee considered the LCM at its meeting on 27 October 2022 and the Chair wrote to the Minister on 1 November asking for more information on two areas within the Committee's remit. The Minister's response was received in a letter dated 10 November, providing further information in relation to the discussions with the UK Government in relation to clause 187 (Vagrancy and begging) and on the financial implications of the Bill.

14. The CCEI Committee also considered the first LCM for this Bill in private at its meeting on 9 November 2022.

15. On 16 and 18 November the UK Government tabled amendments for consideration at Commons Report Stage. The Welsh Government states at paragraph 3 of the SLCM:

"Two amendments affect provisions contained within the Bill as introduced that fell within the legislative competence of the Senedd. A third government amendment makes provision which falls within the legislative competence of the Senedd."

Overview of provisions for which consent is sought in the revised LCM

16. Thirty two clauses are identified in the revised LCM as having "particular relevance" to matters within the legislative competence of the Senedd. The revised LCM does not specify what is meant by the term "particular relevance" but it is assumed that these 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.

17. The clauses are outlined in detail in paragraphs 9 to 43 of the revised LCM and are contained in the following Parts of the Bill:

- Part 1 (Levelling-up Missions) clauses 1 – 6;
- Part 3 (Planning), Chapter 1 (Planning Data) clauses 75-77 and 79-81, and Chapter 4 (Grant and Implementation of Planning Permission) clause 96

(Street Votes) and Chapter 6 (Other Provision) clause 112 (Regulations and Orders under the Planning Acts);

- Part 5 (Environmental Outcome Reports);
- Part 10 (Miscellaneous), clause 186 (Review of governance etc of RICS) and clause 187 (Vagrancy and begging); and
- Part 11 (General), clause 191 (Power to make consequential provision).

Supplementary Legislative Consent Memorandum

18. The SLCM laid on 30 November details amendments to the Bill that have been tabled by the UK Government at the House of Commons Report Stage. These amendments do not relate to Parts 1 or 5 of the Bill, and so are not considered in this report.

UK Government's view on consent

19. Paragraphs 58 and 59 of the revised LCM summarise the areas of the Bill which the UK Government considers are within the Senedd's legislative competence, which includes minor or consequential provisions.

20. The UK Government is of the view that three elements of the Bill extend and apply to Wales which are within the legislative competence of the Senedd:

- Part 3 (Planning), Chapter 1 (Planning Data) and Chapter 6 (Other Provision), clause 112 (Regulations and Orders under the Planning Acts);
- Part 5 (Environmental Outcomes reports); and
- Part 10 (Miscellaneous), clause 186 (Review of governance etc of RICS).

21. Paragraphs 71 and 1538 of the Explanatory Notes, and paragraph 59 of the revised LCM, identify provisions within the Bill that apply in Wales but only to amend legislation for the purpose of restating the existing position in Wales. The revised LCM 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.

22. The UK Government is of the opinion that Part 1 (Levelling Up Missions) does not engage the legislative consent process of Senedd Cymru.

Legislative Competence

Levelling Up, (Part1), Clauses 1-6

23. It is the opinion of the Welsh Government 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 (“GOWA”).

24. The provisions of the Bill establish a framework for levelling-up missions to be put in place and do not include any substantive requirements for the content of such missions. Paragraph 1.5 of the annex to the Minister’s letter to LJC states:

“The missions read as high-level aspirational outcomes linked to specific areas – education, health, transport, employment and economic development. etc. Areas regarded as within the legislative competence of the Senedd.”

25. The revised LCM (Paragraph 45) sets out how Welsh Ministers “continue to seek a co-decision-making role on agreeing the outcomes and how funds supporting the Levelling Up agenda should be spent” to support “policy coherence and avoid duplication.” However, Paragraph 46 states:

“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.”

Well-being of Future Generations (Wales) Act 2015

26. The Welsh Government makes the point that “improving the well-being of everyone in Wales and addressing inequalities is the core mission of this Government” and underpins the approach taken to the Well-being of Future Generations (Wales) Act 2015 (the WFG Act) 2015. Paragraph 47 states:

“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, 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."

27. The revised LCM (Paragraph 50) goes on to point out that:

"The provisions in clauses 1-6 of the Bill contain some of the elements that are already provided for through the WFG Act. This includes annual reporting, indicators and milestones and the setting of objectives to shape delivery."

28. The revised LCM states that "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."

29. The LJC Committee asked the Minister for more information about the disparity of views of the Welsh Government and the UK Government on the need for consent, and what discussions had taken place. Paragraphs 1.6 and 1.7 of the response to LJC Committee stated that:

"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."

30. The letter also states that 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".

31. In light of the arguments set out in the revised LCM, the Minister does not recommend the Senedd consents to the provisions, and Part 1 of the Bill is not supported.

32. The Committee agrees with Welsh Government that consent is required for Part 1 of the Bill, as the purpose of these provisions does not appear to relate to matters reserved to the UK Government.

Environmental Outcomes Reports (Part 5), clauses 116-130

33. As set out in Paragraph 53 of the revised LCM, Part 5 of the Bill replaces the EU environmental assessment system with a new framework for Environmental Outcomes Reports. This aspect of the Bill appears to relate to matters which fall within the remit of the Minister for Climate Change and the Senedd's Climate Change, Environment and Infrastructure Committee, but also to environmental legislation that "touches upon" agriculture, which falls within the remit of this Committee. The revised LCM states:

"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."

34. Paragraph 62 of the revised LCM notes that the Minister does not accept the provisions in relation to environmental outcomes reports. The Minister explains in the letter dated 25 November, at paragraph 14.1, that discussions have taken place between her officials and their counterparts in the UK Government in relation to this Part.

35. It is explained at paragraph 7.2 of that letter that 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 exception to this is the power in section 71A of the Town and Country Planning Act 1990, however clause 128(2) of this Bill

will repeal that section. The Minister concludes in paragraph 7.3 that they are therefore unable to improve the operation of these regimes and there would remain the risk that the Secretary of State makes regulations affecting Wales that undermines the current approach.

36. At paragraph 8.1 of the letter the Minister states that she considers that the Welsh Ministers should have equivalent powers to make regulations in respect of environmental outcomes reports for devolved plans and projects.

37. The Minister, at paragraph 16.1 of the letter dated 25 November, states that she recommends consent is withheld for the provisions in Part 5. The conclusion to the revised LCM states that:

"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."

38. The Committee agrees that the consent of the Senedd is required in relation to clauses 116-130 of the Bill as introduced.

Delegated powers

39. The Committee notes that the Bill also includes provisions for delegated powers in Part 5 of the Bill – Environmental Outcomes Reports – in Clauses 121 and 129.

Financial Implications

40. Paragraphs 66 of the revised LCM set out the Welsh Government's analysis of the financial implications of Clauses 1-6 of this Bill for Wales:

"The effect of the provisions is to place a duty on the UK Government to set, and report annually on progress towards achieving, levelling up missions to reduce geographical disparities across the United Kingdom. The requirement to report on the delivery of levelling up missions, and the parliamentary scrutiny of progress against these missions is a cost to the UK Government and will have no effect on Wales. The effect of the levelling up actions undertaken by the UK Government to deliver these missions is outside of the scope of the Bill."

Committee view

Conclusion 1. The Committee has noted Welsh Government's position in relation to Parts 1 and 5 of the Bill, as set out in the revised LCM, and agrees that Senedd consent is required for Part 1 and Part 5 of the Bill, as introduced.

Conclusion 2. As noted in Paragraph 9 above, in light of other legislative priorities the Committee has not been able to undertake detailed scrutiny of the implications of the provisions of this Bill for Wales. It is therefore not in a position to make a recommendation to the Senedd as to whether or not to agree to Legislative Consent Motion(s) associated with the Revised and Supplementary Memoranda.