

Supplementary Legislative Consent Memorandum (No.3) for the UK Infrastructure Bank Bill

January 2023

Overall conclusion

In our first report on Legislative Consent Memoranda for the UK Infrastructure Bank Bill, we expressed concern that the Bill did not reflect devolved competence. We concluded we were not in a position to form a view on consent until the outcome of ongoing intergovernmental discussions on amendments were known.

Having considered the amendments to the Bill, they do not adequately address our concern. Given this, we are not in a position to recommend the Senedd gives consent to the Bill..

1. Introduction

1. This is the Climate Change, Environment and Infrastructure Committee's (the Committee's) second report on the UK Infrastructure Bank Bill ('the Bill') and associated Legislative Consent Memoranda. Further information on the Bill and earlier Memoranda can be found in our first report, [Legislative Consent Memoranda for the UK Infrastructure Bank Bill](#), which was published in October 2022.

2. This report sets out our views on relevant amendments made at Committee Stage in the House of Commons and our overall conclusion on legislative consent.



The Supplementary LCM (No.3)

3. On 30 November 2022, the Minister for Finance and Local Government laid the Supplementary Legislative Consent Memorandum (No.3) for the Bill ('Memorandum No.3') before the Senedd.
4. On 6 December 2022, the Business Committee referred Memorandum No.3 to this Committee, the Finance Committee, the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee for consideration with a reporting deadline of 16 January 2023.
5. A debate on the Legislative Consent Motion has been scheduled for 17 January 2023.

Our approach

6. Given the limited time available within which we had to consider and report on Memorandum No.3, we were not in a position to take evidence from the Minister.
7. We considered Memorandum No.3 at our meeting on 12 January 2023.

2. Amendments for which consent is required

8. Paragraphs 19 to 44 of Memorandum No.3 provide details of amendments to the Bill agreed at Committee Stage in the House of Commons for which the Welsh Government considers Senedd consent is required.
9. The following paragraphs provide an explanation of the amendments of particular interest to the Committee.

Clause 2 – objectives and activities

10. Clause 2 specifies the Bank's objectives and activities. The objectives are to help tackle climate change and to support regional and local economic growth.
11. Amendments to clause 2 include:

- a change to the definition of “relevant public authority” to clarify that the Bank can provide loans to public authorities¹ other than local authorities and Northern Ireland departments;
- the definition of infrastructure was amended by the House of Lords, by adding a reference to “structures underpinning the circular economy, and nature-based solutions”. This reference has been removed by amendment; and
- the Treasury must consult the relevant devolved authority before making provision in regulations to change the ‘Bank’s activities’ or the meaning of ‘infrastructure’ where that provision would be within the legislative competence of the devolved authority in question.

Clause 3 – strategic priorities and plans

12. Clause 3 requires the Treasury to prepare a statement of strategic priorities for the Bank within six months of the Act coming into force.

13. Clause 3 has been amended to require the Treasury to consult the relevant devolved authority before including in a statement of strategic priorities for the Bank any provision which the Treasury proposes to include in the statement and which concerns a subject matter within the legislative competence of the authority in question.

Clause 7 – corporate governance

14. Clause 7 deals with corporate governance issues relating to the appointment and tenure of directors for the Bank.

15. Clause 7 has been amended to require the Bank’s Board to include one or more directors with responsibility for ensuring that the Board considers the interests of the appropriate national authorities² when making decisions.

¹ The meaning of “public authority” has been added by amendment. It includes “any other person exercising functions of a public nature”.

² The meaning of “appropriate national authority” has been added by amendment. It includes “the Welsh Ministers”.

3. The Welsh Government's position on consent

16. In previous Memoranda for the Bill, the Welsh Government reported its final position on whether to recommend consent would be subject to the outcome of ongoing discussions with the UK Government regarding bringing forward amendments to address 'constitutional concerns'.

17. In Memorandum No.3, the Welsh Government explains amendments agreed at Committee Stage in the House of Commons, "provide a statutory role for the Welsh Ministers or consideration of the interests of Wales in the three main areas where the UK Government has specific powers". It adds:

"While the outcome does not achieve all of [the Welsh Government's] objectives...the UK Government amendments represent a reasonable compromise which will enable the interests of Wales and the Welsh Government to be reflected through the workings of the Bank."

18. The Welsh Government concludes, "the Bill has been amended to better reflect the interests of Wales and the Welsh Government and to better respect the devolution settlement". As such, it recommends the Senedd gives consent to the Bill.

4. Committee consideration

Timetable for scrutiny

We have previously made clear our view on the need for sufficient time to be made available to committees to scrutinise and report on Memoranda – a view echoed by other Senedd committees. We had less than three working weeks to consider and report on Memorandum No.3, which was far from satisfactory. The timing of the debate on the Legislative Consent Motion (scheduled the day after the reporting deadline) means there will be limited time for Members of the Senedd to reflect on the findings of our report (and those of other Senedd committees) before being asked to make a decision on consent. We are concerned that this serves to undermine the scrutiny process.

We expect the Minister to respond to the recommendations made in this report during the debate on the Legislative Consent Motion.

Bank's objectives and activities

We note the definition of "public authorities" has been amended to extend to "any other person exercising functions of a public nature". We seek clarification from the Minister on whether the Bank could act as a lender to devolved public authorities (other than local authorities), based on the new definition. We also seek clarification on whether and how this could impact on funding arrangements for those authorities.

In our first report, we welcomed the amendment agreed by the House of Lords to broaden the definition of infrastructure to include 'nature-based solutions'. We are disappointed the amendment was not retained during Committee Stage in the House of Commons.

Role for the Welsh Government and the Senedd

In our first report, we expressed concern that the Bill failed to reflect devolved competence, with no role for the Welsh Government or the Senedd in the Bank's governance structures. At the time, the Minister said she was seeking amendments to the Bill to provide the Welsh Government and the Senedd with roles equivalent to those of their UK counterparts.

Regrettably, no such amendments have been made. Instead, the Bill, as amended, provides only a consultative role for the Welsh Ministers in the exercise of powers in areas of devolved competence. While this may go some way in protecting the interests of the Welsh Government, it does nothing to protect those of the Senedd. The Bill does not provide a role for the Senedd in scrutinising the exercise of powers or in overseeing the Bank's effectiveness insofar as it relates to Wales. Instead, these matters will be left to the UK Parliament.

Despite the amendments falling woefully short, the Minister considers them a "reasonable compromise". We do not share this view and, as such, are not in a position to recommend the Senedd gives consent.

The Minister has previously been unwilling to share details of the amendments she was seeking with the Senedd on the basis that intergovernmental negotiations were ongoing. Given that the Welsh and UK Governments have reached a settled position, we would welcome details of the amendments the Minister was seeking, including those relating to the role of the Senedd.

Board membership

We welcome the amendment to ensure the Bank's Board includes at least one director to represent the interests of Wales.

Recommendation 1. The Minister should respond to Recommendations 2 and 3 in this report during the debate on the Legislative Consent Motion.

Recommendation 2. The Minister should clarify:

- whether the Bank could act as a lender to devolved public authorities (other than local authorities), based on the new definition of “public authorities”, and
- whether and how the ability of devolved public authorities to borrow from the UK Infrastructure Bank could impact on funding arrangements for those authorities.

Recommendation 3. The Minister should provide details of the amendments to the Bill that she was seeking, including those relating to the role of the Senedd.