

The Welsh Government's Legislative Consent Memorandum on the UK Infrastructure Bank Bill

October 2022

1. Introduction

- 1.** The UK Infrastructure Bank Bill ("the Bill")¹ was introduced in the House of Lords on 11 May 2022. The Bill is sponsored by HM Treasury.
- 2.** On the 25 May 2022, the Minister for Finance and Local Government ("the Minister") laid a Legislative Consent Memorandum ("LCM")² in respect of the Bill.
- 3.** In accordance with Standing Order 29.4, the Business Committee remitted this LCM to the Finance Committee ("the Committee"); the Climate Change, Environment and Infrastructure Committee; the Economy, Trade and Rural Affairs Committee; and the Legislation, Justice and Constitution Committee, with a reporting deadline of 29 September 2022.³
- 4.** On the 8 July 2022, the Minister laid a Supplementary Legislative Consent Memorandum ("SLCM") in respect of the Bill.⁴ The Business Committee agreed a revised reporting deadline of 17 November 2022.⁵

¹ UK Infrastructure Bank Bill, as introduced

² Welsh Government, [Legislative Consent Memorandum](#), UK Infrastructure Bank Bill, May 2022

³ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum for the UK Infrastructure Bank Bill](#), June 2022

⁴ Welsh Government, [Supplementary Legislative Consent Memorandum \(No. 2\)](#), UK Infrastructure Bill, July 2022

⁵ Business Committee, [Timetable for consideration of the Supplementary Legislative Consent Memorandum for the UK Infrastructure Bank Bill](#), July 2022

2. UK Government Policy Objectives / Summary of the Bill

5. The creation of a UK Infrastructure Bank ("the Bank") was first announced by the Chancellor at the Spending Review 2020.⁶ The Bank was launched on a non-statutory basis on 17 June 2021.

6. The UK Government's stated purpose for this Bill is to place the Bank, which will operate on a UK wide basis, on a statutory footing. The UK Government's stated policy objectives of the Bill are to set up the Bank to help tackle climate change and to support regional and local economic growth by providing access to financial instruments, including loans to local authorities to enable investment in infrastructure.⁷

7. By placing the Bank on a statutory footing, the Bill seeks to:⁸

- confirm and give statutory force to the Bank's objectives and activities;
- ensure the Bank is a long-lasting institution;
- create statutory forms of transparency, accountability and governance for the Bank;
- remove legal barriers to the Bank undertaking direct lending to local authorities; and
- grant specific powers to the Treasury to provide financial assistance to the Bank.

8. The Bank's investment principles and the legal background are set out in the Explanatory Notes to the Bill.⁹

3. Provisions for which consent is sought

9. Standing Order 29.1 provides that an LCM 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.

⁶ [UK Spending Review 2020](#)

⁷ UK Infrastructure Bank Bill, [Explanatory Notes](#), May 2022

⁸ UK Infrastructure Bank Bill, [Explanatory Notes](#), May 2022

⁹ UK Infrastructure Bank Bill, [Explanatory Notes](#), May 2022

10. The LCM states that the consent of the Senedd is required for the entirety of the Bill as the Senedd has competence to legislate in the same or similar terms in relation to Wales. It states that:

"The main subject matter of the Bill, providing financial assistance and advisory support to projects relating to infrastructure ((to include water, electricity, gas, telecommunications, sewerage, railways (including rolling stock), roads or other forms of transport and climate change)), is a devolved area of the law. In our view, the following provisions of the Bill require legislative consent."¹⁰

11. The provisions of the Bill which consent is required, are outlined in the LCM.¹¹ These clauses are listed below:

- Clauses 1 (Defining the bank), 10 (Interpretation) and 11 (Extent, commencement and short title);
- Clause 2 (Objectives and activities);
- Clause 3 (Strategic priorities and plans);
- Clause 4 (Directions);
- Clause 5 (Financial Assistance);
- Clauses 6 (Annual accounts and reports) and 7 (Directors: appointment and tenure);
- Clause 8 (Duties of the Bank); and
- Clause 9 (Reviews of the Bank's effectiveness and impact).

12. However, the UK Government is of the view that the Senedd's legislative consent is only required for clauses 2, 3, 4, 5, 8 and 11 of the Bill.¹²

¹⁰ Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraph 25

¹¹ Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraphs 24-42

¹² Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraph 43

13. The position with regards to consent is unchanged following amendments made to the Bill at Report Stage in the House of Lords on 4 July 2022, as summarised in the SLCM.¹³

4. Evidence from the Welsh Government

14. The LCM states that the Bill in its current form “threatens devolved competencies”.¹⁴ In setting out the policy position of the Welsh Government, it states that:

“The Bill as introduced provides no role for the Senedd, the Welsh Ministers, or Welsh Government officials in the governance of the Bank, while reserving certain activities for Parliament, the Chancellor and HM Treasury, such as the power for HM Treasury to amend the Bank’s strategic direction including in areas of devolved competence without consulting the Senedd or Welsh Government.”¹⁵

15. The LCM states that the Welsh Government has sought amendments to the remit of the Bank in areas of devolved competence to “ensure devolution is respected”. It also states that the Minister has written to the Economic Secretary to the Treasury to advocate that devolved institutions “exercise equivalent powers to those of our UK counterparts”, to ensure that “proper democratic accountability” exists within the Bank’s governance structures. The Welsh Government maintains that parity in governance is consistent with its Welsh Government Cabinet principles relating to “cross-border bodies with devolved functions which are established in UK Bills”.¹⁶

16. In relation to the UK Government’s Levelling-Up agenda and associated funding programmes, the LCM states that areas of concern such as “allocations not being aligned to devolved policy, allegations of political bias, the risk of poor value for money” could be exacerbated by the Bank’s operations, without equal status for devolved institutions in the Bank’s governance structures.¹⁷

¹³ Welsh Government, Supplementary Legislative Consent Memorandum (No. 2), UK Infrastructure Bill, July 2022, paragraph 31

¹⁴ Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraph 47

¹⁵ Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraph 48

¹⁶ Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraphs 49 and 52

¹⁷ Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraph 50

17. On 22 June 2022¹⁸, the Committee took evidence from the Minister, to seek her views on the Bill and to obtain further details on any amendments that the Welsh Government was looking to pursue with the UK Government.

18. During the session, the Minister was unable to confirm the Welsh Government's final position on whether to recommend consent given that discussions were ongoing with the UK Government in terms of possible amendments to the Bill. However, the Minister provided the Committee with some information regarding those discussions:

*"I did meet with the Chief Secretary to the Treasury last week for a bilateral, where we raised a number of issues of importance to Wales, this being one of them. And whilst, in principle, I think that the bank could be a good thing, it's an additional source of capital for private and public borrowing, but we do need equivalence. So, when the UK Government is setting up something that will operate in Wales, in Welsh spaces, then we do need to ensure that we are able to have that say, for example, in the bank's remit and also in terms of the governance of the bank as well. So, the UK Treasury Ministers are able to nominate people to be directors for the bank, but where's the role for devolved Governments in that space? So, there are some things that we would want to see the UK Government move on in terms of amendments to the Bill before we're able to come to a decision."*¹⁹

19. She added that "we do need to have that equivalence in terms of Welsh Government and the governance of the bank".²⁰

20. The Minister also provided the Committee with limited additional information on amendments sought, beyond what is included in the LCM:²¹

"The kind of amendments we would want to be considered are around who appoints directors to the bank and what role the devolved Governments would have in that and then also the setting of the bank's mandate, or the direction of the bank, and what role we would play in that, bearing in mind

¹⁸ Finance Committee, [Agenda, 22 June 2022](#), Item 3

¹⁹ Finance Committee, RoP, 22 June 2022, paragraph 161

²⁰ Finance Committee, RoP, 22 June 2022, paragraph 161

²¹ Finance Committee, RoP, 22 June 2022, paragraph 161

*the points that you raised about the importance of ensuring that investment is in line with Welsh Government priorities."*²²

Committee view

21. In its consideration of the LCM and subject to any amendments made to the Bill, the Committee agrees with the Welsh Government's view that the Senedd's consent is required for the entirety of the Bill, as the Senedd has competence to legislate in the same or similar terms in relation to Wales.

22. Furthermore, the Committee supports the Minister in pressing for the Bill to be amended so that devolved administrations have a say in relation to the governance of the Bank, and a defined role in shaping the Bank's remit and strategic direction. The Committee supports the view that adopting such an approach is consistent with Welsh Government Cabinet principles relating to "governance of cross-border bodies with devolved functions which are established in UK Bills",²³ and that these principles should be followed in relation to this Bill.

23. The Committee notes the Welsh Government's concerns regarding the administration of funding streams associated with the UK Government's Levelling-Up agenda and how these issues could be exacerbated by the Bank's operations. The Committee supports the Welsh Government's view that, to ensure the devolution process is not undermined, the Bill needs to provide devolved administrations with equivalent powers and status to those conferred on UK Ministers in relation to the governance of the Bank.

Conclusion 1. The Committee agrees with the Welsh Government that the Senedd's consent is required for the entirety of the Bill.

Conclusion 2. As stated, both the LCM and the Minister's evidence to Committee have referred to amendments sought in relation to the Bill on governance structures, and the Bank's remit and strategic direction. The Committee welcomes the information shared by the Minister, however, because specific details about these amendments are not yet known the Committee cannot give a view on whether to recommend that the Senedd consents to the LCM. The Committee agrees with the Minister that the Bill should be amended to provide Welsh Ministers with a defined role in relation to the governance of the UK Infrastructure Bank that is equivalent in status to that conferred on UK Ministers.

²² Finance Committee, RoP, 22 June 2022, paragraph 161

²³ Welsh Government, Legislative Consent Memorandum, UK Infrastructure Bank Bill, May 2022, paragraph 49

Recommendation 1. The Committee recommends that, as a general principle, the governance structures of any future cross-border body established by a UK Bill that operates within devolved areas should provide the Welsh Government and/or the Senedd with equivalent powers and status to those conferred on UK Ministers and/or the UK Parliament.

Recommendation 2. The Committee recommends that the Minister provides details of specific amendments the Welsh Government is seeking to the Bill as soon as possible before the Legislative Consent Motion is considered by the Senedd in Plenary so that it can inform the Committee's continued scrutiny of the LCM.