

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the UK Infrastructure Bank Bill

January 2023



1. Background

The UK Government's UK Infrastructure Bank Bill

1. The UK Infrastructure Bank Bill¹ (the Bill) was introduced into the House of Lords on 11 May 2022. It is sponsored by HM Treasury.

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

"to make provision about the UK Infrastructure Bank."

3. The Bill completed its passage through the House of Lords on 11 July 2022, and had its first reading in the House of Commons on 12 July 2022. The Bill completed Committee Stage in the House of Commons on 22 November 2022. At the time of writing this report, the date for Report Stage in the House of Commons was yet to be confirmed.

The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)

4. 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.

5. On 25 May 2022, Rebecca Evans MS, Minister for Finance and Local Government (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.²

6. On 8 July 2022 the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2)³ in respect of amendments agreed at Report Stage⁴ in the House of Lords on 4 July 2022.

7. We reported on these Memoranda on 13 October 2022.⁵

¹ [UK Infrastructure Bank Bill, as introduced](#) (HL Bill 3)

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

³ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), UK Infrastructure Bank Bill](#), July 2022

⁴ [UK Infrastructure Bank Bill](#), as amended at Report Stage

⁵ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the UK Infrastructure Bank Bill](#), October 2022

8. Paragraphs 7 to 9 and 16 to 20 of our first report set out the clauses of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent, and identified where disagreement existed between the Welsh and UK Governments.
9. Paragraphs 10 to 13 and 22 of that report set out the Welsh Government's position on the Bill, as set out in the Memorandum and Memorandum No. 2.
10. On 21 November 2022, the Minister responded to our first report.⁶

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

11. On 30 November 2022 the Minister laid before the Senedd a further Supplementary Legislative Consent Memorandum⁷ (Memorandum No. 3) in respect of amendments tabled for consideration at Commons Committee Stage.
12. The Business Committee agreed that the Climate Change, Environment and Infrastructure Committee, the Economy, Trade and Rural Affairs Committee, the Finance Committee and the Legislation, Justice and Constitution Committee should report on Memorandum No. 3 by 16 January 2023.⁸

Update on the position since the publication of the Memorandum and Memorandum No. 2

13. Paragraphs 15 to 44 of Memorandum No. 3 provide an update on the position since the publication of the earlier legislative consent memoranda.
14. Since the laying of Memorandum No. 2, the UK Government tabled further amendments to the Bill for consideration at Commons Committee Stage in relation to clauses 2, 3, 6, 7, 10 and 11. These amendments were agreed to.

⁶ Letter from the Minister for Finance and Local Government, 21 November 2022

⁷ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3), UK Infrastructure Bank Bill, November 2022

⁸ Business Committee, Timetable for consideration of the Supplementary Legislative Consent Memorandum (No. 3) on the UK Infrastructure Bank Bill, November 2022

15. In Memorandum No. 3, in relation to each amendment, the Minister states that they do not impact the competence advice set out for the original clauses. All of these amendments made provision for a purpose within the legislative competence of the Senedd.⁹

The Welsh Government's position on the amendments made to the Bill

16. Paragraphs 19 to 44 of Memorandum No. 3 set out the Welsh Government's view on the amendments made to the Bill for which consent is required.

17. As stated above, the amendments agreed to relate to the following provisions in the Bill:

- clause 2 (Objectives and activities);
- clause 3 (Strategic priorities and plans);
- clause 6 (Annual accounts and reports);
- clause 7 (Directors: appointment and tenure);
- clause 10 (Interpretation);
- clause 11 (Extent and short title).

18. Paragraphs 46 to 50 of Memorandum No. 3 set out the Welsh Government's current policy position:

"The Bill as initially introduced provided no role for the Senedd or the Welsh Government in the governance of the Bank, while reserving certain activities for Parliament, the Chancellor and HM Treasury.

Clause 2 allows the Treasury to amend the Bank's activities and the definition of infrastructure. Through amendment Gov 3 there is a statutory obligation on the Treasury to consult Welsh Ministers when exercising these powers.

Similarly, Clause 3 allows the Treasury to revise or replace the statement of strategic priorities for the Bank. Through amendment Gov 4 there is a statutory obligation on the Treasury to consult Welsh Ministers when exercising these powers.

⁹ Welsh Government, Memorandum No. 3, paragraphs 26, 31, 37 and 44

Amendment Gov 5 states that the Board must appoint one or more Directors to consider the interests of the national authorities. This will provide a statutory duty to liaise between at least one Director of the Board and the Welsh Ministers, helping ensure that the interests of Wales are considered on the Board.

The three amendments outlined above 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. While the outcome does not achieve all of my objectives, I believe that 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."

The Welsh Government's conclusions in Memorandum No. 3

19. In Memorandum No. 3 the Minister states:

"The Bill has been amended to better reflect the interests of Wales and the Welsh Government and to better respect the devolution settlement. I therefore now recommend consent is given to the Bill. In due course, I intend therefore to recommend that the Senedd consents to the passing of this Bill."¹⁰

¹⁰ Welsh Government, Memorandum No. 3, paragraph 53

2. Committee consideration

20. We considered Memorandum No. 3 at our meeting on 9 January 2023.¹¹

21. Given the Welsh Government's proposal to hold a debate on the relevant consent motion for the Bill on 17 January, and taking into account the reporting deadline set by the Senedd's Business Committee, we agreed our report on 16 January 2023.¹²

Our view

22. We note that Memorandum No. 3 concerns amendments made to the Bill in the House of Commons to clauses 2, 3, 6, 7, 10 and 11.

23. We note that amendments made to clauses 2 and 3 of the Bill now provide the Welsh Ministers with a consultative role before HM Treasury may exercise the powers in accordance with those clauses.

24. We acknowledge that the Minister is now recommending to the Senedd that consent is given to the Bill as she considers that it has been amended to "better reflect the interests of Wales and the Welsh Government and to better respect the devolution settlement".

Conclusion 1. We agree with the Welsh Government's assessment that all the clauses (and amendments to those clauses) listed in the Memorandum fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.

25. As we highlighted in our first report, we note that the UK Government's view on the clauses that require consent does not align with that of the Welsh Government.

26. As stated earlier in this report, the Minister wrote to us on 21 November to respond to the recommendations in our first report.

27. Conclusions 2 and 3 in our first report highlighted our concerns that, despite pre-introduction intergovernmental working on the Bill, the Bill was introduced to the UK Parliament in a state which meant the Welsh Government could not recommend the Senedd give its consent to the Bill. We noted our disappointment that this demonstrated clear failures in intergovernmental working.

¹¹ [Legislation, Justice and Constitution Committee, 9 January 2023](#).

¹² [Legislation, Justice and Constitution Committee, 16 January 2023](#).

- 28.** We acknowledge that, since the laying of the Bill before the UK Parliament and the laying of the Memorandum before the Senedd, progress does appear to have been made in the machinery of intergovernmental relations to the effect that that the Welsh Government has secured some concessions, as noted in paragraph 23 above.
- 29.** Recommendation 1 in our first report asked for clarity on why instances of failures in intergovernmental working, as originally shown in relation to this Bill, had not been escalated to higher levels in the intergovernmental structures, including the reformed dispute resolution procedures.
- 30.** We note the Minister's response that, in her view, there has been constructive dialogue with HM Treasury and "it has not been necessary to escalate matters". However, it does remain unclear to us what would need to happen or indeed not happen before the Welsh Government would seek to use the formal dispute resolution processes - for which it advocated - in order to resolve serious disagreements with the UK Government.
- 31.** Recommendation 2 in our first report asked the Minister to clarify what was meant by her statement that the Welsh Government continues to "advocate that the Senedd and the Welsh Government all exercise equivalent powers to those of our UK counterparts".
- 32.** It is disappointing that the Minister's response, that she could not give specific details about the exact nature of the amendments that may be introduced and that her and her officials "have been clear that issues of constitutional concern must be addressed in a manner that is satisfactory to me and ultimately to the Senedd", does not adequately answer our request made in that recommendation.