

Legislative Consent Memoranda for the UK Infrastructure Bank Bill

October 2022

Overall conclusion

The Committee has serious concerns about the Bill, as drafted. We are not in a position to form a view on legislative consent until the outcome of ongoing intergovernmental discussions on amendments to ensure the Bill fully reflects devolved competence are known. We will review our position in light of any amendments to the Bill, which we expect to be included in future memoranda.

1. Introduction

1. On 25 May 2022, the Minister for Finance and Local Government ('the Minister') laid the Legislative Consent Memorandum for the UK Infrastructure Bank Bill ('the LCM') before the Senedd.
2. On 7 June 2022, the Business Committee referred the LCM to the Finance Committee, the Economy, Trade and Rural Affairs ('ETRA') Committee, the Climate Change, Environment and Infrastructure Committee ('the Committee') and the Legislation, Justice and Constitution ('LJC') Committee for consideration with a reporting deadline of 29 September 2022. In referring the LCM, the Business Committee encouraged the Finance Committee, ETRA Committee and this Committee to discuss between them which would take the lead on scrutiny.
3. On 8 July 2022, the Minister laid the Supplementary Legislative Consent Memorandum (LCM No.2) for the UK Infrastructure Bank Bill ('the Supplementary LCM') before the Senedd.



4. On 12 July 2022, the Business Committee referred to the Supplementary LCM to the same committees referred to in paragraph 2 for consideration with a reporting deadline of 19 November 2022.

Our approach

5. At its meeting on 30 June 2022, the Committee agreed to write to the Minister seeking clarification on the Bill's provisions insofar as they relate to the Committee's remit. The Committee also wrote to John Flint, Chief Executive Officer of the UK Infrastructure Bank. The exchanges in correspondence can be found on [Senedd Cymru's website](#).

6. This report sets out the Committee's views on the Bill and the Memoranda insofar as they relate to its remit. Reports by the Finance Committee and the LJC Committee can be found on [Senedd Cymru's website](#).

2. Policy background

7. In 2018, the UK National Infrastructure Commission recommended establishing a UK national infrastructure bank to replace the functions of the European Investment Bank after Brexit. The [UK Government's consultation](#) (November 2019) also found support for such a body.

8. The UK Government's [National Infrastructure Strategy](#) (November 2020) included a commitment to establish a "major new national infrastructure bank" that would operate with a "high degree of operational independence" but within a mandate set by government.

9. The creation of a UK infrastructure Bank ('the Bank') was announced by the Chancellor at the Spending Review 2020. The Spending Review 2020 stated:

"Increased infrastructure investment is supported by a new National Infrastructure Strategy, which sets out the government's plans to transform the UK's economic infrastructure. It is based around three central objectives: economic recovery, levelling up and unleashing the potential of the Union, and meeting the UK's net zero emissions target by 2050. These objectives will be supported by the creation of a new infrastructure bank to catalyse private investment in projects across the UK; as well as through a comprehensive set of reforms to the way infrastructure is delivered."

10. In March 2021, the UK Government published its [Policy Design](#) for the Bank, which sets out the Bank's relationship with the devolved administrations, among other things. It states:

"The Bank will operate across the whole of the UK, working closely with public and private sectors to support infrastructure investment in every nation. Building strategic relationships with the devolved administrations, local authorities across the UK and relevant institutions such as the Scottish National Investment Bank and Development Bank of Wales, will be a priority".

11. The Policy Design also states the UK Government would be "engaging with representatives from the devolved administrations in the next phase of the Bank's design".

12. The Bank was launched on a non-statutory basis on 17 June 2021. To coincide with the launch, the UK Government published the UK Infrastructure Bank Framework Document ('the Framework Document'), which sets out the accountabilities and relationships between the Bank, the Shareholder (HM Treasury) and the Shareholder Representative (UK Government Investments).

13. In March 2022, ahead of the Bank's first strategic plan, the Chancellor wrote to the Bank to outline the UK Government's policy priorities for the institution and to provide additional clarity on its mandate. The letter sets out the Chancellor's expectations for the Bank:

- to work constructively with government and institutions in each nation of the UK to maximise the impact of its investments;
- to develop a nuanced understanding of the characteristics of the market in all four nations so that it can target its investments appropriately;
- to prioritise the building of strong relationships with the Scottish National Investment Bank and the Development Bank of Wales and working closely with the Northern Ireland Executive in ways that are compatible with the UK's devolution arrangements;
- to focus its investment and engagement towards building its presence in the market in all four nations; and
- to monitor the impact that the Bank is having in each nation.

14. The Bank published its Strategic Plan 2022 in June 2021.

3. The UK Infrastructure Bank Bill

Purpose of the Bill

15. The UK Infrastructure Bank Bill ('the Bill') was introduced in the House of Lords on 11 May 2022.

16. The Explanatory Notes ('EN') to the Bill state:

*"The purpose of this Bill is to place the UK Infrastructure Bank ('the Bank') on a statutory footing. The Bank is an operationally independent institution wholly owned by government. **The Bank's purposes are to help tackle climate change and to support regional and local economic growth, through investment in infrastructure** (emphasis added)."*

Progress through the UK Parliament

17. The Bill completed Report Stage in the House of Lords on 4 July 2022, where a series of amendments were agreed. Further details of amendments relevant to our consideration can be found in Section 5 of this report.

18. The Bill had its first reading in the House of Commons on 11 July 2022. The date for second reading has yet to be announced.

4. The LCM and SLCM

Provisions for which consent is required

19. According to the LCM, Senedd consent is required for the entire Bill (clauses 1 to 11) as the Senedd has competence to legislate in the same or similar terms in relation to Wales. The LCM states:

"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."

20. Paragraphs 24 to 42 of the LCM outline the provisions of the Bill for which the Welsh Government considers Senedd consent is required.

- 21.** Paragraphs 43 to 46 of the LCM set out the UK Government's view on consent.
- 22.** According to the UK Government, Senedd consent is only required for clauses 2,3,4,5,8 and 11 of the Bill.

Amendments for which consent is required

- 23.** Paragraphs 14 to 29 of the Supplementary LCM provide details of amendments to the Bill agreed at Report Stage in the House of Lords for which the Welsh Government considers Senedd consent is required.
- 24.** According to the Supplementary LCM, "The UK Government's view on the need for consent remains the same as outlined in the first LCM tabled on 25 May 2022".

The Welsh Government's current policy position

- 25.** The LCM states "the Bill as currently drafted threatens devolved competencies. i.e., powers are reserved for UK Ministers and HM Treasury in a manner that undermines the responsibilities and obligations Welsh legislators were elected to protect".

- 26.** It goes on to state:

"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."

- 27.** The LCM explains that "Welsh Government officials have sought amendments relating to the remit of the bank in areas of devolved competence to ensure devolution is respected, but to date the UK Government has not yet made any such changes". The Minister has written to the UK Government "to advocate that the Senedd, the Welsh Ministers and Welsh Government officials all exercise equivalent powers to those of our UK counterparts". She has called for the UK Government "to amend the Bill to enable the Senedd and the Welsh Ministers to take their appropriate role within Governance structures to ensure proper democratic accountability".
- 28.** In conclusion, the LCM reiterates that a number of the clauses for which Senedd consent is needed "are of constitutional concern to the Welsh Government, thus, despite the merits of some of the clauses, the Welsh Ministers' final position on whether to recommend consent is

subject to the outcome of ongoing discussions with the UK Government regarding bringing forwards amendments to the Bill”.

29. The SLCM explains the UK Government has yet to make any amendments to the Bill to address the Welsh Government’s concerns.

5. Clauses of interest to the Committee

30. The following paragraphs provide an explanation of the clauses of particular interest to the Committee, given its remit, and amendments made to those clauses during Report Stage in the House of Commons.

Clause 2 – objectives and activities

31. Clause 2(3) provides the Bank’s objective are: to help tackle climate change, including by supporting efforts to meet the target for 2050 set out in section 1 of the Climate Change Act 2008, and to support regional and local economic growth.

32. Clause 2(4) provides the Bank’s activities are: providing financial assistance to projects wholly or mainly relating to infrastructure; providing loans to relevant public authorities for such projects; acting as a centre of expertise and providing advisory and other support services in relation to such projects; and any other activities that are incidental or conducive to, or otherwise connected with, the aforementioned activities.

33. Clause 2(5) of the Bill, as introduced to the House of Lords, provided the meaning of ‘infrastructure’ includes technologies and facilities relating to: water, electricity, gas, telecommunications, sewerage or other services (including the provision of heat), railways (including rolling stock), roads or other forms of transport; and climate change (including the removal of greenhouse gases from the atmosphere).

34. As set out in the Supplementary LCM, during the House of Lords Report Stage, amendments were made to expand the meaning of ‘infrastructure’ so as:

- to include ‘structures underpinning the circular economy, and nature-based solutions’; and
- to make it clear that energy efficiency, in relation to electricity, gas and the provision of heat, is within the definition of infrastructure.

35. Clause 2(7) provides that the Treasury may, by regulations, amend the Bank's objectives and activities. These regulations would be subject to approval by the UK Parliament.

Clause 3 – Strategic priorities and plans

36. Clause 3 places a requirement on the Treasury to prepare a statement of strategic priorities for the Bank within six months of the Act coming into force. The Treasury may revise or replace the statement. A copy of the statement (or revised statement) must be laid before the UK Parliament.

37. The Bank must publish and act in accordance with strategic plans which reflect the Treasury's statement, and update those plans whenever the Treasury revises or replaces its statement.

6. Committee consideration

Alignment with Welsh strategic priorities

38. During its consideration of the memoranda, the Committee considered whether and how the Bank's strategic priorities and objectives align with those of the Welsh Government.

39. John Flint, Chief Executive Officer of the UK Infrastructure Bank explained the Bank held regular meetings with the Welsh Government, Welsh local authorities and wider stakeholders, including the Development Bank of Wales, which "helped to align" its Strategic Plan with Welsh priorities and policy drivers. He added:

"When making investment decisions we consider the extent to which each investment opportunity delivers on our Strategic Plan and towards wider UK policy on climate change and economic infrastructure, including that of Wales".

40. John Flint said the Bank's Strategic Plan "will be refreshed regularly and so will remain up to date with Welsh policy". In addition, he said the Bank will continue to engage frequently with Welsh Government, local authorities, and other market players on the delivery of the Plan.

41. Although the Minister said the Bank "has the potential to support the Welsh Government's infrastructure priorities", she emphasised the need for equivalence between administrations in terms of the Bank's governance. This would enable the Welsh Government (and the other Devolved Governments) to influence the setting of the Bank's Strategic Priorities and Plans.

The Bank's statutory objectives

A nature objective?

42. The Bank's statutory objectives are to help tackle climate change and to support economic growth. Alongside Spring Budget 2021, the UK Government committed to review the case for "broadening the UK Infrastructure Bank's environmental objectives" to include areas such as improving the UK's natural capital. In reporting its findings, the UK Government concluded:

"...we believe that support for nature-based solutions can be delivered through the Bank's existing policy framework, without the addition of a specific third objective on nature. This will enable the Bank to focus on building its capability to meet its two stretching objectives on tackling climate change and supporting regional and local economic growth".

43. However, it went on to "encourage the Bank to consider the role it could play in nature-based solutions and how that might develop over time".

44. The Committee sought the Minister's view on the Bank's objectives, including whether they should be extended, for example, to include tackling the decline in biodiversity. According to the Minister, the objectives "are sufficiently broad to encompass a comprehensive range of interventions with respect to climate change, including biodiversity, nature-based solutions or the circular economy". However, she added, "I would not be averse to seeing these objectives on the face of the Bill".

45. The Minister reiterated the need for equivalence between administrations in terms of the Bank's governance, so as to enable them to have a say in honing of the Bank's objectives where necessary.

Balancing objectives

46. The Framework Document recognises the potential for tension between the Bank's objectives to help tackle climate change and to support economic growth, particularly in the near term. It states, "Where an investment is primarily to support economic growth, the [Bank] will ensure that it does not do significant harm against its climate objective". In commenting on this, the Minister said, "it is clear to me that the Bank's exercise of due diligence in regard of this stipulation must be central to determining whether a project is supported or otherwise".

47. The Committee asked John Flint to explain how the Bank determines whether an investment would "do significant harm". He told us:

"All investments financed by the Bank undergo environmental, social, resilience & governance (ESRG) screening. Our identification of ESRG concerns and "significant harm" is risk-based and seeks to ensure that adequate mitigations are in place. This includes, amongst other things, assessing how projects manage their direct and indirect environmental and social impact, the climate resilience of their projects, risks and the robustness of their ESRG governance structures. UKIB requires ongoing regular reporting on key metrics and annual and environmental reports from our clients to ensure ongoing alignment with our mandate."

48. John Flint added the Bank is "currently further enhancing our ESRG, including improving our approach to "do no significant harm", so ensuring it is fit for purpose in this fast-progressing area". He said details of the Bank's evolving ESRG approach will be set out in its annual reports.

49. Even though a specific investment decision may not meet the threshold of 'significant harm', the Committee was concerned that a series of decisions could be considered cumulatively to cause significant harm. The Committee, therefore, asked John Flint to explain whether and how the Bank will consider the cumulative impact of its investment decisions. John Flint said the Bank "recognises the importance of monitoring cumulative impact". He added:

"We consider every new investment in relation to assets already financed, including impact and additionality. In accordance with our net zero mandate, the cumulative contribution of the Bank to climate mitigation will be measured over time. The location specific environmental characteristics of investment projects are considered in our assessment of cumulative impact, including in relation to our "do no significant harm" principle."

Meaning of infrastructure

50. The Committee sought the Minister's views on the meaning of 'infrastructure'. She told us, the meaning "appears to be reasonably broad". Again, she reiterated the need for equivalence between administrations in terms of the Bank's governance, so as to enable the UK Government and the Devolved Administrations "to revisit collaboratively and with full respect to devolved competencies the objectives and definitions if they were found, for example, to be too restrictive".

51. The Framework Document sets out types of projects the Bank should not support, including projects involving extraction, production, transportation and refining of crude oil, natural gas or thermal coal with 'very limited exemptions'. It provides a non-exhaustive list of

exemptions. The Committee asked John Flint to provide details of the criteria the Bank uses when determining whether a project should be subject to an exemption. He explained:

"Exemptions will be considered in the context of the energy transition where the benefit of moving a technology, business or sector to a lower carbon emissions intensity is crucial to net zero and we can evidence the relative avoided emissions from the investment. Fossil fuel generation of any kind will only be considered by exception with adequate and proportionate carbon capture storage where emissions will be reduced over the lifetime of the asset. Judgements on exemptions will always be made in collaborative and transparent fashion."

52. John Flint also explained the Bank is required to seek written approval from shareholders "before entering into any transaction that is or could be deemed novel, contentious, or repercussive". He said, "Where possible and practical to do so, we will look to consult with the Welsh Government on any potentially contentious issues arising from our activities in Wales".

Our view

A role for the Welsh Government and the Senedd

If Wales is to reach its 2050 net zero target it will require significant infrastructure investment from both the public and the private sectors. We believe the Bank could potentially play an important role in scaling up and accelerating investment to support Wales' transition to net zero. While we support, in principle, the creation of the Bank, we have serious concerns about the Bill, as drafted.

The Bank, which will operate on a UK-wide basis, will exercise functions in Wales in areas of devolved competence. The Bill fails to take account of this. There is no role for the Welsh Government or the Senedd in the Bank's governance arrangements: the Bank's strategic priorities are set by the UK Government (clause 3); the power to amend the Bank's activities and the meaning of 'infrastructure' rest with the UK Government and UK Parliament (clause 2); the power to give direction to the Bank about how to deliver its objectives rests with the UK Government (clause 4); and oversight of the Bank's effectiveness will be a matter for the UK Parliament (clause 9). This is unacceptable.

We support the Welsh Government's calls for the UK Government to amend the Bill to provide the Welsh Government and the Senedd with roles in the Bank's governance equivalent to those

of their UK counterparts. As yet, the Welsh Government has not been prepared to share details of the amendments it is seeking with Senedd committees.

Investing in nature

Given the escalating nature emergency and the need to rapidly accelerate action to address it, we are disappointed the UK Government ruled out the inclusion of a statutory nature objective following its review of the Bank's environmental objectives. We believe this is a missed opportunity.

Notwithstanding the above, we were encouraged to hear from the Minister that the Bank's objectives are sufficiently broad to enable investment in nature-based solutions and biodiversity. We welcome the amendment agreed in the House of Lords to expand the meaning of 'infrastructure', which provides legal certainty that nature-based solutions are within the scope of the Bank. We hope this amendment will be retained as the Bill passes through the House of Commons.