

LEGISLATIVE CONSENT MEMORANDUM

ADVANCED RESEARCH AND INVENTION AGENCY BILL

Background

1. This memorandum has been lodged by Shirley-Anne Somerville MSP, Cabinet Secretary for Education and Skills, under Rule 9.B.3.1(a) of the Parliament's Standing Orders, and is supported by Jamie Hepburn MSP, Minister for Higher Education, Further Education, Youth Employment and Training. The Advanced Research and Invention Agency Bill was introduced in the House of Commons on 2 March 2021. The Bill can be found at <https://bills.parliament.uk/bills/2836>.

Content of the Advanced Research and Invention Agency Bill

2. The Explanatory Notes set out the UK Government view that the primary purpose of this Bill is to create a new body, the Advanced Research and Invention Agency (ARIA), with significant independence from government influence and with as few bureaucratic burdens as possible in order to give it maximum freedom to achieve its aim of supporting "*ambitious scientific research with a tolerance to failure*".

3. The Bill contains provisions about:
- the establishment and functioning of ARIA;
 - powers of the Secretary of State over ARIA;
 - consequential amendments;
 - interpretation, extent and commencement of the Bill.

Provisions which relate to Scotland

4. The Bill extends to the whole of the United Kingdom, including Scotland (see clause 13).

5. However, the amendments made by Schedule 3 of the Bill have the same extent as the provision being amended. Paragraphs 5 and 11(2) of that Schedule make amendments which extend to Scotland and require legislative consent. Paragraph 11(1) makes an amendment which does not extend to Scotland. The other provisions of Schedule 3 make amendments which would extend to Scotland, but are not considered to fall within devolved competence and therefore do not require consent.

6. The elements of the Bill that make provision for a purpose within the legislative competence of the Scottish Parliament, or alter that legislative competence or the executive competence of the Scottish Ministers, and are requiring consent are:

- clauses 1-4
- clauses 6-12
- schedule 1
- schedule 2
- schedule 3 paragraphs 5 and 11(2)

7. Clause 5 does not require consent because it relates to national security, which is a reserved matter.

8. The list of provisions requiring consent from the Scottish Parliament has been recognised as such by the UK Government. There is no disagreement on this between the UK and Scottish Governments.

Reasons for considering legislative consent

9. The provisions requiring consent from the Scottish Parliament fall under the following subjects:

Establishment and functioning of ARIA (Clauses 1-3; Schedule 1)

10. Clauses 1-3 and schedule 1 require consent because they make provision about research and innovation, which are devolved matters, for a purpose within the legislative competence of the Scottish Parliament.

11. Clause 1 establishes the Advanced Research and Invention Agency (ARIA) as a corporate body and introduces schedule 1. Schedule 1 details the structure and operation of ARIA. This includes:

- how executive and non-executive members are appointed;
- term limits and remuneration; and
- reporting requirements; and
- supplementary powers.

12. Although the UK Government claims that high independence of ARIA from government is of key importance to its functioning, paragraph 2(3) of schedule 1 includes the UK Government Chief Scientific Adviser (CSA) as a non-executive member of the ARIA Board. A request to give the Chief Scientific Adviser for Scotland an equivalent place was rejected by the UK Government. Paragraph 2(3) of schedule 1 of the Bill also gives the Secretary of State the power to appoint further Board members. Although this is not the current stated policy intention of the UK Government, it does leave the ARIA Board open to the potential future appointment of more UK Government officials or advisers whilst the Scottish Government would remain without any influence. The Scottish Government therefore sees it as fundamental that amendments are made to paragraph 2(3) of schedule 1 that ensure Scottish Government representation on the ARIA Board. For this reason, the Scottish Government does not recommend consent to paragraph 2(3) of schedule 1 as it stands.

13. Paragraphs 2(3) and 3(1) of schedule 1 give the UK Secretary of State the power to appoint the Chair and first Chief Executive Officer (CEO) for ARIA, positions which are expected to greatly determine the direction of ARIA's activities in the first phase of its existence. The recruitment processes for these posts have already started (even though the Bill has not yet passed) and are led by two senior civil servants in the UK Government. The Devolved Administrations have been offered no role in this. Paragraphs 8(7), 9(4) and 11 of schedule 1 give the UK Secretary of State also influence over other staffing matters at ARIA.

14. Clause 2 sets out ARIA's functions. It states that ARIA may do, or commission or support others to do, any of the following:

- (a) conduct scientific research;
- (b) develop and exploit scientific knowledge;
- (c) collect, share, publish and advance scientific knowledge

15. Although ARIA will be established as a funding agency and not a research institution in its own right, this clause gives ARIA the freedom to become actively involved in the programmes they sponsor to ensure their success.

16. The clause also states that the activities which ARIA may do, commission or support in exercising a function are not restricted to activities in the United Kingdom, i.e. ARIA can fund research anywhere in the world.

17. Subsection 6 of clause 2 states that ARIA must have regard to the desirability of exercising its functions for the benefit of the United Kingdom.

18. Clause 3 states that in exercising any of its functions, ARIA may give "particular weight" to the potential for significant benefits to be achieved or facilitated through scientific research, or the development and exploitation of scientific knowledge, "that carries a high risk of failure". This clause captures the key reason for the establishment of ARIA: the funding of high risk research.

Powers of the Secretary of State (Clauses 4, 6-8, 10-11; Schedule 2)

19. Clauses 4, 6-8, 10-11 and schedule 2 require consent because they make provision about research and innovation, which are devolved matters, for a purpose within the legislative competence of the Scottish Parliament.

20. Clause 4 provides the UK Secretary of State with the power to grant funding to ARIA. This funding can be made subject to conditions. This clause therefore gives the UK Government a way to directly influence the activities of ARIA. Although it is not the current stated policy position to do so, this route could be used by the UK Government to exercise more control over ARIA in future.

21. Clause 6 requires ARIA to provide the UK Secretary of State with information upon request. The clause also notes that ARIA is not required to disclose information if it contravenes data protection legislation or in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

22. Clause 7 introduces schedule 2, which contains provisions about schemes for the transfer of staff, property, rights and liabilities to ARIA. The schedule gives the UK Secretary of State and UK Research & Innovation (UKRI) powers to make property and staff transfer schemes to ARIA.

23. Clause 8 allows the UK Secretary of State to make provisions by regulations for the dissolution of ARIA. Subsection 2 states that such regulations may not be made before ten years have elapsed since the Bill has passed. This is included to allow ARIA time to mature and prove its effectiveness. The regulations would be subject to the draft affirmative procedure in the UK Parliament. As the Bill stands, neither the Scottish

Ministers nor Scottish Parliament would have a formal say in the potential dissolution of ARIA, even though this could have a major impact on research organisations in Scotland.

24. Clause 10 allows the UK Secretary of State to make consequential amendments to legislation in connection with the ARIA Act. Again, there would be no role for the Scottish Ministers or Scottish Parliament in this process. Clause 11 makes further provision about regulations that can be made by the Secretary of State under the Act, including a power to make consequential, transitional or savings provisions.

25. Most of the clauses discussed above give the UK Government considerable opportunity to influence ARIA, now and in the future. Although it is not currently the stated policy intent to exercise such influence strongly, the approach in the Bill to minimising UK Government influence appears much less strict than that to influence by the Devolved Administrations.

Consequential amendments (Clause 9; Schedule 3 paragraphs 5 and 11(2))

26. Clause 9 introduces schedule 3, which makes consequential amendments. Under this schedule, references to ARIA would be inserted into the following pieces of legislation:

- Scotland Act 1998 (paragraph 5)
- Public Contracts (Scotland) Regulations 2015 (paragraph 11(2))

27. Paragraph 5 of schedule 3 makes amendments which have the effect of making ARIA a reserved matter. As such, it alters the legislative competence of the Scottish Parliament and the executive competence of Scottish Ministers and requires the consent of the Scottish Parliament.

28. The creation of ARIA in the way proposed by the Bill will narrow the sphere of devolved competence for research and innovation in Scotland. Although it will not affect the legal powers of the Scottish Parliament or Scottish Ministers to provide for research funding, it does affect their ability to set research policy in other ways as a result of the fact that ARIA will be controlled solely by UK Ministers.

29. It would be very difficult for the Scottish Government to try to gain formal influence over ARIA at a later stage once legislation is in place. This has been experienced with UKRI which makes key decisions that directly affect Scottish research organisations and businesses without any ways of formal influence for the Scottish Government.

30. ARIA will also significantly change the research funding landscape and will impact on the behaviour and priorities of researchers and research providers in Scotland, as well as other organisations funding research in Scotland. This could for instance have a direct impact on the demand from universities for an increase in core research funding which the Scottish Government provides via the Scottish Funding Council (SFC).

31. The UK Government will have, in the longer term, the power to shape ARIA further, change the relevant legislation, widen its remit, increase its level of funding or

abolish it. The Scottish Parliament and Scottish Ministers would have no formal influence over this, in the same way they're currently lacking such influence over changes in activity by UKRI.

32. It remains unclear to the Scottish Government why exactly this reservation is required. It appears a heavy-handed approach to minimising devolved government influence over ARIA when more nuanced options would be available to ensure this. The way in which the Devolved Administrations have been completely excluded from involvement in ARIA by making it a reserved matter is not in line with the limited way in which UK Government influence is being controlled in the Bill. The UK Secretary of State will have key legal powers to influence the agency and the UK Government Chief Scientific Adviser, who works closely with UK Ministers, will be on the Board of ARIA.

33. The Scottish Government therefore sees it as fundamental that paragraph 5 of schedule 3 is removed from the Bill. For this reason, the Scottish Government does not recommend consent to paragraph 5 of schedule 3 as it stands.

34. Paragraph 11(2) of schedule 3 makes amendments to the Public Contracts (Scotland) Regulations 2015 in order to exempt the agency from existing Public Contract Regulations in Scotland. This is to give ARIA the flexibility to fund activities in an agile manner. The provision requires consent because it makes provision for a purpose within devolved competence.

Interpretation (Clause 12)

35. Clause 12 requires consent because it makes provision about research and innovation, which are devolved matters, for a purpose within the legislative competence of the Scottish Parliament.

36. Clause 12 makes provisions about interpretation of the Bill. It sets out the definitions of:

- functions;
- primary legislation;
- scientific knowledge;
- scientific research.

General comments

37. The Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament and alters that competence and the executive competence of the Scottish Ministers.

38. The Bill applies to the whole of the United Kingdom even though research and innovation sit within the legislative competence of the Scottish Parliament. The only other key area of direct relevance to research policy that is currently reserved is another UK Government agency: UKRI. All other key research-related issues are devolved.

39. Most aspects of the Bill are not contentious but, as outlined above, the Scottish Government does see it as fundamental that amendments are made to the provisions in the Bill that fail to provide for Scottish Government representation on the ARIA Board and that make ARIA a reserved matter (schedule 1 paragraph 2(3) and schedule 3 paragraph 5).

40. For this reason, the Scottish Government cannot, as it stands, recommend the Scottish Parliament gives its consent to the UK Parliament legislating in respect of any of the provisions in the Bill that make provision for a purpose within the legislative competence of the Scottish Parliament, or alter that legislative competence or the executive competence of the Scottish Ministers (as listed under paragraph 6).

Consultation

41. There has been no formal consultation by the UK Government on the Bill but the House of Commons Science and Technology Committee held an inquiry into the creation of the new agency to which many stakeholders gave evidence. The UK Government responded to the Committee report and accepted some of its more minor recommendations¹. The UK Government has also held informal meetings with stakeholder organisations in Scotland on the creation of the new agency in some of which the Scottish Government was involved. Scottish stakeholders were not consulted specifically on the constitutional or governance aspects of the ARIA Bill by the Scottish Government but have expressed the opinion, as part of the SFC Review of Coherent Provision and Sustainability, that decisions about UK Government research funding flows and policy should be tracked and influenced wherever possible.

Financial implications

42. There are no direct financial implications for the Scottish Government from the Bill. Nor are there for research organisations in Scotland. Some organisations and businesses in Scotland may benefit from the grant that ARIA is expected to be given by the UK Government, and other future ARIA funding.

Draft Legislative Consent Motion

43. Under Rule 9B.3.3 (d) of the Parliament's Standing Orders, if the Scottish Government does not propose to include a draft motion in the Memorandum, the Memorandum must explain why not. Paragraphs 12 and 27-33 set out the Scottish Government's reasons for not including a draft motion in this Memorandum for the purposes of that rule.

Conclusion and Scottish Government position

44. The Scottish Parliament and Scottish Ministers have overall responsibility for the excellence, impact and sustainability of research and innovation in Scotland. ARIA has the potential to significantly influence all these aspects. The Scottish Government therefore believes it would be in Scotland's interest to create the agency as a body

¹ For the House of Commons report and the UK Government response see: <https://committees.parliament.uk/work/265/a-new-uk-research-funding-agency/>

overseen by the UK Government together with the Scottish Government (and potentially the other Devolved Administrations). As such, the Scottish Government has requested that amendments should be made to the Bill to provide for Scottish Government representation on the ARIA Board and not make ARIA a reserved matter.

45. As such amendments are fundamental, the Scottish Government cannot, at this time, recommend the Scottish Parliament gives its consent to the UK Parliament legislating in respect of any provisions in the Bill (as listed under paragraph 6) that are within the legislative competence of the Scottish Parliament, or alter that legislative competence or the executive competence of the Scottish Ministers.

46. In view of this fact, the Scottish Government has not included a draft Legislative Consent Motion in this Memorandum.

47. The Scottish Government's position, which has been explained to the UK Government, is that the relevant provisions in the ARIA Bill should be amended in order to make the Advanced Research and Invention Agency a shared responsibility for the UK and Scottish Governments. If during the remaining stages of the Bill's progression, appropriate amendments are provided which address the Scottish Government's fundamental concerns, a supplementary memorandum with a final position on consent will be lodged. At present, the Scottish Ministers cannot recommend to the Scottish Parliament to give its consent.

SCOTTISH GOVERNMENT
September 2021

This Legislative Consent Memorandum relates to the Advanced Research and Invention Agency Bill (UK legislation) and was lodged with the Scottish Parliament on 2 September 2021

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