

# Legislative Consent Memorandum

## Levelling-up and Regeneration Bill

### Background

1. This memorandum has been lodged by Kate Forbes, Cabinet Secretary for Finance and the Economy, under Rule 9B.3.1(a) of the Parliament's standing orders, and is supported by Richard Lochhead, Minister for Just Transition, Employment and Fair Work. The Levelling-up and Regeneration Bill was introduced in the House of Commons on 11 May 2022. The Bill can be found at [Levelling-up and Regeneration Bill - Parliamentary Bills - UK Parliament](#).

### Content of the Levelling-up and Regeneration Bill

2. The Bill forms part of the wider UK Government programme to 'level up the country' as set out in the February 2022 Levelling Up White Paper.<sup>1</sup> Part 1 of the Bill introduces statutory provision for the UK Government's "Levelling-up Missions" which cover many areas that are within the devolved responsibility of the Scottish Government and Scottish Parliament including justice, health, and education. The Bill also includes provisions for planning reform (for England) outlined in the earlier Planning for the Future White Paper<sup>2</sup> (August 2020).
3. The bill has 196 clauses and 17 schedules and is divided into 11 parts. The provisions relevant to this memorandum are: Part 1 on Levelling-up Missions; provisions on Planning Data (Part 3, Chapter 1), interlinked with Environmental Outcome Reports (Part 5); and provisions to enable the review of the Royal Institution of Chartered Surveyors (clause 186).

### Part 1 – Levelling-up Missions

4. The UK Government has identified 12 policy areas for improvement by 2030, a number of which are within devolved competence: economic development, transport, skills, employment, health, housing and justice. The UK Levelling Up white paper set targets for these areas for 2030, including some UK-wide targets. Part 1 of the Bill extends and applies UK-wide and imposes duties on UK Government Ministers to:
  - make statements of levelling-up missions which focus on how the UK Government intend to reduce geographical disparities across the UK;
  - the statement must also detail how the Minister proposes to measure and report progress in delivering those levelling-up missions;

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<sup>1</sup> [Levelling Up the United Kingdom - GOV.UK \(www.gov.uk\)](#)

<sup>2</sup> [Planning for the future - GOV.UK \(www.gov.uk\)](#)

- report annually on the delivery of the levelling-up missions; and
- review the statements of levelling-up missions.

The UK Government Minister must lay the statements of levelling-up missions and reports before the Westminster Parliament and publish them.

## Part 3, Chapter 1 – Planning Data

5. Chapter 1 of Part 3 relates to Planning Data provisions, linked to the functioning of Environmental Outcome Reports. This Chapter gives the Secretary of State the power to regulate the processing of planning data by planning authorities, to create binding “approved data standards” for that processing. It also provides planning authorities with the power to require planning data to be provided to them in accordance with the relevant approved data standards.

## Part 5 – Environmental Outcomes Reports

6. Part 5 of the Bill seeks to improve outcomes for the natural environment. Clause 116 of the Bill introduces powers for the Secretary of State to specify outcomes relating to environmental protection in the United Kingdom or a relevant offshore area. Linked to this is a power to require Environmental Outcomes Reports (EORs) to be prepared in relation to a proposed relevant consent or a proposed relevant plan, introducing a new approach to environmental assessment in planning and other consenting systems and moving away from the current and EU-derived procedural approach in place across the UK.
7. In Scotland, as in the rest of the UK, we currently require the following environmental assessments to be carried out:
  - Environmental Impact Assessment (EIA) for evaluating the significant environmental effects likely to arise from proposed development projects;
  - Habitats Regulations Appraisal (HRA) for plans that are likely to have an effect on a European Site; and
  - Strategic Environmental Assessment (SEA) for all qualifying public plans, programmes and strategies.
8. Regulations for EIA are bespoke for the differing consenting regimes, and cover a range of sectors including Planning, Marine Licensing, Forestry, Energy, Trunk Roads and Agriculture. Environmental assessment interests therefore cross a range of ministerial portfolios. Although there are differences between the EIA, HRA and SEA legislation across the UK, broadly these follow a similar framework and share a common legislative heritage. Delivery of a new system of environmental assessment by the UK Government will be through secondary legislation, following further policy development. Currently there is very little information available regarding the planned changes and how this may impact on well-established and

understood processes that are designed to protect our environment. Provisions in Part 5 of the Bill would effectively give UK Ministers powers to override these environmental protections in Scotland. Significant divergence in the application of Environmental Assessment regulations, which currently follow a similar framework and align with EU regulations, is likely to introduce significant regulatory complexity. This is particularly the case where both devolved and reserved consenting regimes interact, for example in relation to applications for marine licenses for offshore wind.

## Clause 186 - Royal Institution of Chartered Surveyors

9. Clause 186 enables the carrying out of a review of the Royal Institution of Chartered Surveyors (RICS). In January 2021, the RICS Governing Council commissioned Alison Levitt QC to conduct an independent review into specific events that took place in 2018 and 2019 in relation to the management and decision-making on its treasury management process and the subsequent dismissal of four Non-Executive Directors.
10. A subsequent external review led by Lord Bichard was published in June 2022 recommending that the Governing Council commits to commissioning an independent review of RICS once every five years. That review should specifically consider the Institution's effectiveness in upholding public trust and confidence in the work of its members and the degree to which its work is undertaken for the public advantage. It would also look at the overall effectiveness of RICS in achieving the objectives set out in the Charter which is to be amended.
11. The Bichard Review effectively replicates the provisions in relation to Clause 186, but with a definite and specified review period of five years. RICS has already confirmed that it will accept all 36 recommendations in the Report with immediate effect.
12. In these circumstances Scottish interests will be protected by the five yearly review even in the absence of Clause 186 as it is a global, not just UK, organisation. The issue of the Bichard Report may also lead to the dropping of Clause 186 from the Bill in any event as no longer being necessary. Should it remain then Scottish interests will be doubly covered by the ability to contribute to any call for evidence. Further the Bichard Review also recommends giving more autonomy to Regional Boards including RICS Scotland who will ensure that Scottish stakeholders' views are known.

## Requirement for Legislative Consent Memorandum

13. The provisions in Part 1 do not alter the executive competence of Scottish Ministers or the legislative competence of the Scottish Parliament. It is our position that Part 1 of the Bill triggers the need for a LCM as it contains provision applying to Scotland for purpose(s) that are within the legislative competence of the Parliament.

14. Part 1 of the Bill (Levelling-up Missions) extends and applies UK-wide and imposes duties on a Minister of the Crown to make statements of levelling-up missions which focus on reducing geographical disparities across the UK and then to report on progress of those missions and to review the statements. Many of the “levelling-up missions” are in areas of devolved competence e.g. education, health, housing, justice.
15. The UK Government considers that Part 1 of the Bill does not require legislative consent: “Since these duties apply to inequalities across the UK as a whole this does not relate to the legislative competence of the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru” (Explanatory Notes, paragraph 1539). However, in substance these provisions will, and are intended to, provide a legislative framework to underpin a role for UK Ministers in devolved areas. Statements on the levelling-up missions would include matters within the devolved competence of the Scottish Parliament. These provisions are made for the purposes of education, health, housing and justice which are within the legislative competence of the Scottish Parliament.
16. Chapter 1 of Part 3 of the Bill sets out powers under clause 75 to make “planning data regulations”, while Part 5 sets out powers under clause 116 to make “EOR regulations” in relation to environmental outcome reports. In terms of clause 80 and clause 121 respectively, the Secretary of State must consult the Scottish Ministers before exercising the power to make planning data regulations or EOR regulations which include provision (a) within the legislative competence of the Scottish Parliament, (b) which could be made by the Scottish Ministers or (c) which confers, modifies or removes a function of the Scottish Ministers. This enables the UK Government to legislate within areas of devolved competence following consultation with Scottish Ministers.

## Recommendation on Legislative Consent

17. The Scottish Government had no engagement with the UK Government on the development of its Levelling Up white paper or its 12 Missions. Nor was there any engagement prior to the launch of the Levelling-up Fund, Community Renewal Fund or Community Ownership Fund, nor was there prior warning of the new UK-wide Islands Forum or an intention to create an Innovation Area in Glasgow ahead of the launch of the Levelling Up white paper. Similarly, there was no consultation or engagement on Part 1 of this Bill, nor on the requirement for legislative consent.
18. As neither the Scottish Government nor Parliament have any role in the governance of these Funds, with all decisions made by UK Government Ministers, the Scottish Government has not been able to support these initiatives. While the government welcomes all additional funding for Scotland, it is unacceptable for the UK Government to decide how money should be spent in areas of devolved responsibility, especially without any meaningful consultation or engagement.

19. It is for the Scottish Government, accountable to the Scottish Parliament, to decide how policies in devolved areas are developed and delivered in Scotland, including allocation of funding, in line with the devolved settlement. UK Government Ministers do not have a role in setting targets for matters within devolved responsibilities, and the Scottish Government cannot therefore recommend consent to Part 1 of the Bill.
20. On the other provisions of the Bill, the powers at clauses 75 and 80, and at clauses 116 and 121, for UK Government to legislate within areas of devolved competence following consultation with Scottish Ministers rather than full consent to the measures are also unacceptable, and would effectively give UK Ministers powers to override environmental protections in Scotland. Again the Scottish Government cannot recommend consent to these provisions as introduced.

## Conclusion

21. The UK Government's Levelling-up and Regeneration Bill contains provisions that would give UK Government Ministers a role in setting targets for devolved matters, reporting on these to the Westminster Parliament; further, it contains provisions which would effectively give UK Ministers powers to override existing and established environmental protections in Scotland. This is fundamentally at odds with the devolution settlement, which places responsibility for devolved matters with the Scottish Government, accountable, through the Scottish Parliament, to people in Scotland. The Scottish Government cannot recommend that the Parliament consent to the Bill as introduced.
22. In addition, the Bill as introduced gives UK Government Ministers powers to act in devolved areas without needing the consent of the Scottish Government or Parliament. Again, the Scottish Government cannot recommend that the Parliament gives consent to these provisions as they stand.

Scottish Government  
July 2022

This Legislative Consent Memorandum relates to the Levelling-up and Regeneration Bill (UK legislation) and was lodged with the Scottish Parliament on 27 July 2022

# Levelling-up and Regeneration Bill – Legislative Consent Memorandum

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