

Agenda – Finance Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	Owain Roberts
Meeting date: 7 July 2022	Committee Clerk
Meeting time: 09.30	0300 200 6388
	SeneddFinance@senedd.wales

At its meeting on 30 June, the Committee agreed a motion under Standing Order 17.42(ix) to exclude the public from today's meeting.

Registration (09.15–09.30)

- 1 Introductions, apologies, substitutions and declarations of interest**
(09.30)
- 2 Welsh Government First Supplementary Budget 2022–23: Consideration of draft report**
(09.30–10.30)
Supporting documents:
FIN(6)–16–22 P1 – Draft report (To be included in supplementary pack)
- 3 Post–EU funding arrangements: Consideration of key issues**
(10.30–11.15)
Supporting documents:
FIN(6)–16–22 P2 – Key issues paper (To be included in supplementary pack)
- 4 Appointment of Wales Audit Office Non–executive members and Chair: Approach to recruitment**
(11.15–11.45) (Pages 1 – 54)
Supporting documents:
FIN(6)–16–22 P3 – Candidate brief

FIN(6)-16-22 P4 – Appointment of Wales Audit Office Non-executive members and Chair: Approach to recruitment

FIN(6)-16-22 P5 – Terms and Conditions of appointments

5 Welsh Government Draft Budget 2023–24: Approach to scrutiny

(11.45–12.00)

(Pages 55 – 65)

Supporting documents:

FIN(6)-16-22 P6 – Paper on the approach to scrutiny

FIN(6)-16-22 P7 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd: Budget timetable 2023–24 – 1 July 2022

FIN(6)-16-22 P8 – Letter from the Minister for Finance and Government – 4 July 2022

6 Consideration of Forward Work Programme

(12.00–12.15)

(Pages 66 – 76)

Supporting documents:

FIN(6)-16-22 P9 – Forward Work Programme

7 Legislative Consent Memorandum (LCM) on the UK Infrastructure Bank Bill

(12.15–12.30)

(Pages 77 – 96)

Supporting documents:

FIN(6)-16-22 P10 – LCM on the UK Infrastructure Bank Bill

FIN(6)-16-22 P11 – LCM timetable: UK Infrastructure Bank Bill

FIN(6)-16-22 P12 – Letter from the Chair of the Climate Change, Environment and Infrastructure Committee to the Minister for Finance and Local Government – 30 June 2022

Legal Advice Note

Document is Restricted

By virtue of paragraph(s) ix of Standing Order 17.42

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Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru
Welsh Government

Elin Jones MS
Llywydd/ Presiding Officer
Chair of Business Committee

Llywydd@senedd.wales

1 July 2022

Dear Elin,

Under Standing Order 20, as the Minister with responsibility for Senedd Business, I am required to write to the Business Committee two weeks before the end of the summer term to set out a timetable for when the Draft Budget will be laid, and the Annual Budget motion tabled.

The Minister for Finance and Local Government has met with the Chair of the Finance Committee to discuss the various options for publishing the Draft and Final Budgets, and the constraints we once again face in relation to any UK Government autumn fiscal event and the prospect of any additional funding as a result. They had a constructive and open dialogue about how best to manage this and have followed up with an exchange of correspondence which not only addresses the timing of the next Budget but also broader considerations regarding engagement and the Budget protocol.

As you will see from the letter at annex A, the Minister for Finance and Local Government has set out the complexities and limitations we face and the rationale for the preferred option to publish the draft Budget in December, and final Budget in March.

For these reasons, it is challenging to provide confidence, at this stage, on the dates we will publish the Draft and Final 2023-24 Budgets. Standing Order 20.6 does, however, make provision for the Committee to make changes to the timetable at the request of the Government. Subject to this, and on that basis, I will provide a firm timetable as soon as possible after it becomes clear whether the UK Government will hold an Autumn fiscal event.

As you will see from the letter, the Minister for Finance has committed to publish the Draft Budget at the earliest opportunity and maximise engagement wherever possible throughout the process; however, it is important for me to indicate the 'worst case scenario' timeline which is wholly dependent on the UK Government's announcements. This timeline also recognises the time needed to produce our documentation bilingually.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Our aim would be to publish the Draft Budget within four weeks of the UK Government's fiscal event, as a minimum, ensuring we can provide Senedd committees with the full eight weeks for scrutiny set out in Standing Orders.

As such, we are planning to publish the Outline and Detailed Draft Budgets together before, but at the latest, 13th December and would ask that the Finance Committee publishes its report on the Draft Budget on or before Monday 6th February to enable the debate on the Draft Budget to take place on Tuesday 7th February. The Annual Budget would need to be published on 28th February 2023, in order that it can be debated on Tuesday 7th March, which is the latest date it can be debated and approved before the statutory deadline of 11th March.

In proposing these dates, I am mindful of both Standing Order 20.5 and the arrangements agreed between the Welsh Government and Senedd Cymru with regard to the period provided for scrutiny. Standing Order 20.5 provides, in 'normal' circumstances, for the Finance Committee to be given eight weeks to report on the outline budget proposals and five weeks for committees to consider the detailed Budget proposals. Whilst this cannot be termed a 'normal' year, the Minister for Finance and Local Government has committed to ensuring the fullest possible scrutiny of our spending proposals. The timetable I have set out would provide seven weeks and four days for scrutiny of both the outline and detailed Draft Budget proposals.

In these circumstances, I should be grateful for confirmation that you would support a change to the dates set out above in line with the provision set out in Standing Orders.

I would also like to take the opportunity at Business Committee to seek confirmation from my fellow Business Managers they would be similarly supportive. I am grateful for the Committee's understanding and trust these arrangements are acceptable given the circumstances, which are mostly driven by external factors beyond our immediate control.

I am copying this letter to the Chair of the Finance Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Ein cyf/Our ref

Peredur Owen Griffiths MS
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20 June 2022

Dear Peredur,

Thank you for our meeting earlier this week to discuss the options for a timetable for publishing the 2023-24 Budget. I was pleased to renew our shared commitment to working in partnership to improve our budget processes and appreciated the constructive conversation.

In this spirit, I am asking the Committee for its views on a preferred timetable for publishing the draft and final budgets, which must be provided to the Business Committee two weeks before the end of the summer term.

As you are aware, we face increasingly challenging economic and fiscal conditions, which are impacting on our spending plans. The deteriorating economic position and rising inflation has resulted in a real terms budget position at least £600m less than when we developed our spending plans last year. The lack of certainty over the significant pressures facing our plans will not be resolved until we know whether our settlement will change in any UK Autumn Fiscal event. The details of any proposed event have not yet been shared with us by the UK Government, so there is much uncertainty.

As you are aware, we chose to take a position of maximising all of the levers available to us in setting an ambitious multi-year budget up to 2025, providing much needed certainty to our public service partners and stakeholders. These choices included over-programming capital expenditure by £100m, alongside minimising the amount of funding held in reserves to enable Ministers to ensure delivering Programme for Government commitments was at the forefront of their planning assumptions.

With these conditions in mind, I am keen to seek the Committee's views on how to take forward this year's budget preparations in respect to the timings for publishing the draft Budget. I have set out the opportunities and challenges regarding the two workable

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timetable options: the first, publishing our Draft Budget in October and the second, to publish our Draft Budget following the UK Government autumn fiscal event.

Option 1

Publish the Draft Budget on Tuesday 4th October to enable 8 weeks for scrutiny; publish the Final Budget on Tuesday 20th December

In our response to the Finance Committee's report on the 2022-23 Draft Budget, Ministers agreed a recommendation to adhere to the timetable set out in the Budget Business Protocol, which would see the draft and final budgets published in October and December respectively.

In normal circumstances, this would remain our preferred timetable, and was most certainly my intention given the multi-year settlement we provided last year. However, circumstances dictated by the UK Government, as well as the challenging economic circumstances, are impacting our ability to maintain this commitment. Given the current uncertainty, it is likely we would need to publish relatively unchanged plans for 2023-24 in an October draft budget, with any substantive changes to those plans being deferred until after our settlement has been confirmed.

You will recognise the potential impact, under this scenario, on the Finance Committee's ability to undertake effective scrutiny of our draft budget plans. Under this scenario, the Committee would be scrutinising a draft budget which will change substantially following changes to our settlement. Scrutiny is an essential part of the process that informs and shapes our final budgets.

Option 2

Publish the Draft Budget on Monday 19th December at the latest to enable a minimum of 7 weeks for scrutiny; publish the Final Budget on Tuesday 28th February

The alternative option is to adopt the practice employed in recent years, utilising the exceptional circumstances for which the Budget Protocol provides, and deferring publication of our draft and final budgets until December and March, respectively.

This option will provide us with the ability to incorporate any changes provided by the UK Government, allowing time for changes to our settlement to be reflected in our draft budget, and resulting in greater certainty for our delivery partners and stakeholders. Importantly, this will maintain the Senedd Committees' ability to scrutinise the more complete version of our spending plans, as is allowed for within the exceptional circumstances in the Budget Protocol.

I recognise the concerns the Finance Committee are likely to have with this option, not least that it could result in reducing the scrutiny period; I am, however, committed to limiting this impact as much as possible. Should the UK Government fiscal event take place sufficiently early in October or November, I would make every effort to bring forward publication of our draft budget as soon as practicably possible, to enable a full 8 weeks for scrutiny. In support of this aim, all Ministers will make themselves available whenever the various Committee scrutiny sessions are scheduled.

I also wish to explore what further measures we could put in place to support Committee scrutiny of the draft budget – particularly if Option 2 is taken forward. While I am sure you recognise the limitations of providing specific details on spending plans prior to publication, I do wish to find opportunities to engage early and throughout the budget planning and share as much information as is possible, building on the steps we have already taken to improving how we can work together. We discussed some of these ideas when we met this week,

including opportunities for the Committee to engage with the Welsh Government's Chief Economist on the economic and fiscal conditions; continued engagement on the Budget Improvement Plan; and an opportunity to engage on possible shared priorities or themes which have emerged from the Committee's stakeholder engagement over the summer. I would be keen for our officials to explore the ways in which we might share the information which informs our budgetary decisions.

While I would wish to do all I could to maintain my commitment to publishing our draft budget in October, on balance this will prove challenging, given the difficult circumstances we face. In my view, the viable option is the second option (December – March publications) on the grounds there is limited benefit in providing a budget we foresee substantially changing, which limits adequate scrutiny and risks negative impacts for our delivery partners across Wales. I also acknowledge the ongoing implications of having a Budget Protocol predicated on a substantive UK Government Spring Fiscal Event, rather than the Autumn Fiscal event we have seen in recent years.

In seeking the Committee's views, I believe there are compelling and unavoidable reasons why it would be wise to defer publication of the draft budget until after the anticipated UK Fiscal Event in the Autumn, with a commitment to provide as much certainty on our proposed spending plans as is possible beforehand. I am grateful for the Committee's willingness to consider these timetabling options and look forward to your response.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
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4 July 2022

Thank you for your letter dated 24th June, which sets out the Committee's reflections on the timetable for the Draft and Final Budgets 2023-24. Following Committee scrutiny on the First Supplementary Budget on the 30th of June, I thought it might be helpful to set out my response to this letter, as well as to provide the Committee with more detail regarding the contribution the Welsh Government has made to the UK Government's military support package for Ukraine.

Budget Timetable

I am grateful to the Committee for confirmation that you would support a decision to defer publication of our Draft Budget until our Budget settlement has been confirmed. My Cabinet colleague, the Trefnydd, as the Minister with responsibility for Senedd business wrote to the Business Committee on 1st July, as required under Standing Order 20, to indicate our intention to publish the Draft Budget on 13th December and to table the Annual Budget Motion on 28th February. As you will see from the letter at annex A, the Trefnydd's letter seeks to provide guarantees that would mitigate the impact of a curtailed timetable on budget scrutiny in the Senedd which I hope provides the Committee with some reassurance.

Engagement

As part of our ongoing engagement regarding the scrutiny of future budgets, I have asked my officials to engage with the Committee Clerk to explore further how we can provide additional opportunities to engage during the period between the summer and publication of the Draft Budget. As part of this engagement, I would be keen to learn more about the evidence and ideas the Committee has received from its stakeholder engagement on the Budget, to explore where there are shared priorities. As previously discussed I will also arrange for the Welsh Government's Chief Economist to brief the Committee on how the economic and fiscal conditions are impacting on Welsh Government funding.

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Review of the Budget Protocol

I accept the Committee's concerns regarding the Budget Protocol; the fact it is predicated on a substantive UK Government Spring Fiscal Event rather than the Autumn Fiscal event, and the complications this causes when the timings do not align does present some challenges. Whilst this does demonstrate how the Budget Protocol responds to exceptional circumstances, and how adaptable we are at responding to ever changing circumstances presented by the UK Government, I do, however, recognise the issue this presents the Committee. I am open to exploring this point further.

Military support package for Ukraine

During yesterday's session, you raised the UK Government's announcement of a further £1bn military support package for the Ukraine. In addition to my [Written Statement](#), I thought it would be helpful to the Committee to set out in greater detail the circumstances that gave rise to the Welsh Government's contribution to this package and the resulting implications.

On 21st June, the Chief Secretary to the Treasury (CST) informed me that HM Treasury had asked all Whitehall Departments to surrender 1.5% of their capital budgets 2022-23 in order to fund a military support package for Ukraine. I was asked whether the Welsh Government wished to contribute the equivalent Barnett share of £30m capital funding for this purpose, and if not, I was informed there would be a corresponding Barnett reduction in our capital budget at UK Supplementary Estimates.

Presented with this limited choice, I agreed to contribute £30m capital funding in light of the exceptional circumstances and the Welsh Government's steadfast commitment to support the people of Ukraine. However, in my response to the CST, I was clear that this must not set a precedent for future funding arrangements. In particular, the Welsh Government does not accept that it is a legitimate operation of the Barnett formula to reduce devolved government budgets if UK departments surrender funding as a result of underspends they have incurred or to fund reserved functions including military aid and defence.

Our published spending plans for 2022-23 fully commit our capital settlement and include borrowing the maximum £150m. This reflects that the UK Spending Review 2021 reduced our capital budget, so that it is less than 2021-22 in every year of the Spending Review period. Taken together with increasing inflationary pressures, we simply do not have underspends from which we can support this contribution.

As part of my response to the CST I requested that the Welsh Government's borrowing limit was uplifted this year by at least £30m to ensure that there is no detriment to our investment plans. This request has not been granted. It will therefore result in challenging decisions and is likely to necessitate some activity being delayed or stopped. I will provide the Committee with further detail on these decisions in due course.

I am copying this letter to the Chair of the Business Committee.

Yours sincerely,



Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Agenda Item 6

By virtue of paragraph(s) ix of Standing Order 17.42

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LEGISLATIVE CONSENT MEMORANDUM

UK INFRASTRUCTURE BANK BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum (LCM) must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The UK Infrastructure Bank Bill (“the Bill”) was introduced in the House of Lords on 11 May 2022. The creation of a UK infrastructure bank (“the Bank”) was first announced by the Chancellor at the Spending Review 2020. The Bank was launched on a non-statutory basis on 17 June 2021, and has already begun making investments.
3. The Bill as introduced can be found on the UK Parliament website: [UK Infrastructure Bank Bill \[HL\] - Parliamentary Bills - UK Parliament](#)
4. This LCM considers only the Bill as introduced. 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.

Policy Objectives

5. 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. It will operate on a UK-wide basis.
6. Her Majesty's Treasury (HM Treasury) published a new [National Infrastructure Strategy](#) alongside the UK Spending Review in 2021, and this outlined plans to transform UK infrastructure in order to “level up the country, strengthen the Union, and put the UK on the path to net zero emissions by 2050”. Underpinning this strategy was the intention to create a UK Infrastructure Bank to “play a leadership role in supporting private infrastructure projects to help meet the Government's objectives on economic growth, levelling up, and transitioning to net zero”.
7. In March 2021, HM Treasury published a [policy design document](#), which confirmed that in total, the UK Infrastructure Bank would have £22 billion of financial capacity to deliver on its objectives. The Bank's financial capacity consists of £12 billion of equity and debt capital, and the ability to issue £10 billion of guarantees. The bank's investments are expected to help unlock over £40 billion of overall investment.

Summary of the Bill

8. The Bill is sponsored by HM Treasury.
9. The UK Government's stated 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.

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

- 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.

Investment Principles

11. The Bank’s Framework Document has the following investment principles to guide which investments are within the scope of its mandate. These principles state that investments should:

- A. help to support the Bank’s objectives to drive regional and local economic growth or support tackling climate change;
- B. be in infrastructure assets or networks, or in new infrastructure technology. The Bank will operate across a range of sectors, but will prioritise in particular clean energy, transport, digital, water, and waste;
- C. intend to deliver a positive financial return, in line with the Bank’s financial framework; and
- D. be expected to crowd-in significant private capital over time.

12. The Framework Document notes that the Bank’s dual objectives of investing in projects to help mitigate and adapt to climate change, and of supporting regional and local economic growth across the UK have “huge potential synergies” but where these objectives are in tension with each other the Bank will “have regard to both of these objectives, both in setting its lending and investment policies and in assessing specific transactions”. It further notes that: “where an investment is primarily to support economic growth, the Bank will ensure that it does not do significant harm against its climate objective”.

13. As is further set out in the Framework Document, the Bank will not lend or provide other support to projects involving extraction, production, transportation and refining of crude oil, natural gas or thermal coal with very limited exemptions. These exemptions include projects improving efficiency, health and safety and environmental standards (without substantially increasing the lifetime of assets), for Carbon Capture and Storage (‘CCS’) or Carbon Capture, Usage and Storage (‘CCUS’) where projects will significantly reduce emissions over the lifetime of the asset, or those supporting the decommissioning of existing fossil fuel assets. The Bank will also not support any fossil-fuel fired power plants, unless part of an integrated natural gas-fuelled CCS or CCUS generation asset. This policy will be updated over time to reflect changes in government policy and regulatory standards.

Legal background

14. The Bank was set up in June 2021 as a company under the Companies Act 2006 (c46) and wholly owned by HM Treasury.

15. The establishment of the Bank relied on the common law capacity of the Crown to form and support companies.

16. Parliamentary authority for the funding of the Bank, and its initial establishment and exercise of activities derives *inter alia* from the Infrastructure (Financial Assistance) Act 2012 (c16) and to the extent relevant, sections 50 and 51 of the United Kingdom Internal Market Act 2020 (c27).
17. The present Bill seeks to provide a more specific and tailored Westminster Parliamentary mandate for the Bank, which is reflective of both general considerations concerning transparency, accountability and governance, as well as the current UK Government's policy priorities in relation to infrastructure investment.
18. The Bill affords a degree of flexibility for future changes to the scope of the Bank's activities (including the definition of "infrastructure") to allow for the possibility of future UK governments wishing to adjust the scope and focus of the Bank's mandate to reflect their policy priorities, and potential future changes in the market for infrastructure. This is achieved through powers to make delegated legislation subject to the affirmative procedure, as detailed in relation to clause 2 below.
19. The following legislation is relevant by way of background to the provisions of the Bill:
- a) The Companies Act 2006. The Bank is already a registered company and bound by the Companies Act 2006. The present Bill will complement provisions already set out in Companies Act 2006, for example on governance and may in some cases overlay or modify the Bank's obligations under that Act (see for example clauses 2(1), 3(5) and 4 as described below).
 - b) The Climate Change Act 2008 (c27). This set a legally binding target for the UK to reach net zero carbon emissions by the year 2050 and is referenced in the Bill in relation to the Bank's climate change objective (see the description of clause 2(3) below).
 - c) The Infrastructure (Financial Assistance) Act 2012 and sections 50 and 51 of the United Kingdom Internal Market Act 2020. As noted above these provisions were relied upon for the setting up and initial funding and activities of the Bank. The current Bill provides a definition of infrastructure which is specifically tailored to the Bank and reflective of the current Government's policy priorities for the Bank. This definition is in some respects broader, and in other respects narrower than that set out in the 2012 and 2020 provisions and is subject to future change through delegated legislation as noted above.
20. In terms of the Bank's lending to local authorities for infrastructure purposes, the Bill is intended to remove any legal impediments to this that may derive from the existence of the detailed statutory code that currently governs public sector lending to local authorities. The relevant provisions are contained in the Public Works Loans Act 1875 (c89), section 4 of the Public Works Loans Act 1944 (c16), sections 3 to 6 of the National Loans Act 1968 (c12), the Local Loans (Procedure) Regulations 1968 (SI 1968/458) and the Public Works Loans (Fees) Regulations 1991 (SI 1991/1539). These provisions read together would likely amount to a comprehensive statutory scheme displacing any alternative or additional legal capacity to make public sector loans to local authorities for infrastructure purposes in accordance with the decision of the House of Lords in *R v Secretary of State for the Home Department; ex parte Fire Brigades Union* [1995] 2 AC 513. The Bill makes clear, as detailed in below in relation to clauses 2(4)(a) and 9, that the legal doctrine in the *Fire Brigades Union* case does not prevent the Bank undertaking infrastructure lending to local authorities.

21. The Bank in its current form has engaged in some transactions involving infrastructure lending to local authorities and private companies, however the only existing project being funded is a private sector driven solar farm in South Wales. In these transactions, the relevant loans originated through the Public Works Loans Act process, and were subsequently novated to the Bank, in observance of the current legal limitations as outlined above.

Territorial extent and application

22. The Bill extends and applies to the whole of the United Kingdom.

23. Infrastructure investment is a mixture of reserved and devolved competence. Matters relating to energy, cross-border rail and digital communications are cases where investment in infrastructure is likely to fall within reserved competence. Other matters such as rail, ports or bridges within a single devolved country or area are likely to fall within the legislative competence of the Senedd.

Provisions in the Bill for which consent is required

24. The Bill has a UK wide extent (as per clause 11(1) of the Bill) and the Bank is intended to be a UK-wide organisation. Whilst the Bank, which is wholly owned by HM Treasury, applies otherwise than in relation to Wales, for the purpose of establishing whether consent is required for the Bill, the question our analysis considers in respect of each clause of the Bill is whether the Senedd could legislate to do the same or something similar in relation to Wales. Therefore, the question considered in the below analysis is whether the Senedd could legislate with an England and Wales extent and a Wales application to achieve the same or something similar to the measures set out in this Bill, whether by first establishing a company (i.e. in the way that UK Government have established the Bank), or by using existing mechanisms, to provide financial assistance, loans, advice and support etc., with the objectives of (a) tackling climate change and (b) supporting economic growth, including at regional or local level in relation to Wales.

25. Consent of the Senedd is required on the entirety of the Bill as the Senedd has competence to legislate in the same or similar terms in relation to Wales. 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:

Clauses 1 (Defining the 'Bank') and 10 (Interpretation) and 11 (Extent, commencement and short title)

26. Clause 1 provides the definition of the 'Bank' for the purposes of the Bill. Clauses 10 and 11 are standard Bill provisions comprising interpretation, short title, commencement and extent.

27. Consent is required – these clauses are neither in competence or outside of competence in their own right as they are ancillary to the wider Bill. As the Bill itself (and all other clauses therein) relates to devolved matters, it is correct to treat these

clauses as being 'in competence' for the purposes establishing whether consent is required.

Clause 2 – Objectives and activities

28. This specifies what the Bank's objectives and activities are to be. The objectives of the Bank are to help tackle climate change and to support economic growth. The activities of the Bank are to provide financial assistance 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), provide loans to public authorities for such projects and to provide advisory and other support services for such projects.

29. Consent is required – the Senedd can legislate to confer these functions (which, as above, themselves relate to devolved areas of law) on a body it creates.

Clause 3 – Strategic priorities and plans

30. This clause requires HM Treasury to prepare a statement of strategic priorities for the Bank and requires the Bank to secure that its articles of association provide for the Bank to publish and act in accordance with such strategic plans.

31. Consent is required - the Senedd has competence to impose such an obligation on the Welsh Ministers and on a similar body to the Bank that it has created.

Clause 4 – Directions

32. This clause provides that HM Treasury may give a specific or general direction to the Bank about how it is to deliver its objectives and that the Bank must comply with such a direction.

33. Consent is required - the Senedd has competence to impose such obligations on a similar body to the Bank that it has created.

Clause 5 – Financial assistance

34. This clause makes provision for HM Treasury to provide financial assistance to the Bank for the purpose of helping the Bank in the delivery of its objectives. HM Treasury may arrange for money to be paid out of the National Loans Fund in order to enable loans to be made to the Bank, whether directly or indirectly and where a loan from the National Loans Fund is made directly to the Bank, HM Treasury is to determine the rate of interest on the loan, and other terms and conditions.

35. Consent is required – the Senedd can legislate to provide financial assistance to a body it creates for the purpose of helping the body it creates in the delivery of its objectives (which, as above, themselves relate to devolved areas of law). Further, by ignoring the source of funds (the National Loans Fund) for the purposes of the analysis, we conclude that the Senedd could legislate to enable loans to be made more generally in the manner prescribed by this clause (noting, specifically, the Explanatory Notes to the Wales Act 2017 which states that the reservation on government lending in paragraph 15 of Part 2 of Schedule 7A of GOWA does not affect the Senedd's ability to allocate resources, whether part of its assigned budget or raised through its tax-varying powers).

Clauses 6 (Annual accounts and reports) and 7 (Directors: appointment and tenure)

36. Clause 6 requires the Bank's directors to deliver to HM Treasury a copy of the accounts and reports which they are required to prepare in accordance with section 441 of the Companies Act 2006 and to lay a copy of those accounts and reports before Parliament.
37. Clause 7 deals with corporate governance issues relating to the appointment and tenure of directors for the Bank.
38. Consent is required - the Senedd has competence to impose such obligations and corporate governance requirements on a similar body to the Bank that it has created.

Clause 8 – Duties of the Bank

39. This clause provides that any duty imposed on the Bank or its directors by or under 'this Act' is enforceable on an application by HM Treasury by injunction.
40. Consent is required - the Senedd has competence to make an application for enforcement by injunction. We specifically note that an injunction is an existing remedy and the Bill is not seeking to modify civil remedies (therefore the restriction at paragraph 8(1)(c) of Schedule 7A of GOWA does not apply to this clause).

Clause 9 - Reviews of the Bank's effectiveness and impact

41. This clause obliges HM Treasury to carry out reviews of the effectiveness of the Bank in delivering its objectives and its impact in relation to climate change and regional and local economic growth. After each review, HM Treasury must publish a report of the review and lay a copy of the report before Parliament.
42. Consent is required - the Senedd has competence to impose such obligations on a similar body to the Bank that it has created and on the Welsh Ministers regarding publishing a report of the review and laying a copy of the report before the Senedd.

UK Government view on the need for consent

43. The Economic Secretary to the Treasury has provided his analysis of the Bill regarding the UK Government's need for consent to the Bill. The Economic Secretary to the Treasury argues that the provisions of the Bill extend to the whole of the UK, but that Clauses 2, 3, 4, 5, 8 and 11 contain provisions that could fall within the legislative competence of the Senedd. It is the UK Government's view that only these clauses engage the legislative consent process. This analysis is high level and focuses on the type of possible investment of the Bank ('investment in areas such as rail, ports or bridges') and the location of that investment ('located solely in Wales').
44. Whilst the Economic Secretary to the Treasury has correctly identified that the Bank could be investing in types of infrastructure for which the Senedd has legislative competence and whilst he has correctly identified that such investment could relate to projects entirely situated in Wales, this is a narrow view of legislative competence.

45. As above, it is important to note that the Bill has a UK wide extent (as per clause 11(1) of the Bill) and whilst the Bank, which is wholly owned by HM Treasury, applies otherwise than in relation to Wales, for the purpose of establishing whether consent is required for the Bill, the question that the analysis must consider in respect of each clause of the Bill is whether the Senedd could legislate to do the same or something similar in relation to Wales. Therefore, the question that we have asked in our analysis is whether the Senedd could legislate with an England and Wales extent and a Wales application to achieve the same or something similar to the measures set out in this Bill, whether by first establishing a company (i.e. in the way that UK Government have established the Bank), or by using existing mechanisms, to provide financial assistance, loans, advice and support etc., with the objectives of (a) tackling climate change and (b) supporting economic growth, including at regional or local level in relation to Wales. It is unclear whether this approach has been adopted by the Economic Secretary to the Treasury and it is possible that he has approached his analysis from a different angle.
46. Turning to the clauses that the Economic Secretary to the Treasury does not consider to be in competence, we comment as follows:
- a) Clauses 1 and 11 – these clauses are not operative clauses (they provide the definition of the Bank (clause 1) and the extent and short title of the Bill (clause 11)) and so are neither in competence or outside of competence in their own right as they are ancillary to the wider Bill. As the Bill itself relates to devolved matters, it is correct to treat clauses 1 and 11 as being ‘in competence’ for the purposes of establishing whether consent is required.
 - b) Clauses 6 and 7 – these clauses deal with the corporate governance of an existing body corporate and as such (as the objectives and activities of the said body corporate are within competence) they are within the legislative competence of the Senedd. The Senedd has competence to impose such obligations and corporate governance requirements on a similar body to the Bank that it has created.
 - c) Clause 9 – this clause places an administrative requirement on the Bank and on HM Treasury and the Senedd has competence to impose such obligations on a similar body to the Bank that it has created and on the Welsh Ministers regarding publishing a report of the review and laying a copy of the report before the Senedd.

Welsh Government’s Current Policy Position

47. Devolution remains the settled will of the Welsh electorate, and our position must be to protect the powers of the Senedd, whereas 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.
48. 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.

49. I have written to the Economic Secretary to the Treasury to advocate that the Senedd, the Welsh Ministers and Welsh Government officials all exercise equivalent powers to those of our UK counterparts. This is necessary in order to be consistent with Welsh Government Cabinet principles, i.e., that “The Welsh Government must have an equal status to the UK Government’s in governance of cross-border bodies with devolved functions which are established in UK Bills.”

50. The remit of the Bank is directly linked to the UK Government’s policy approach to the Levelling Up agenda. We remain concerned at an operational level that issues demonstrated through separate analyses of the Towns Fund, Levelling Up Fund and the Shared Prosperity Fund - such as allocations not being aligned to devolved policy, allegations of political bias, the risk of poor value for money - may be exacerbated by the Bank’s operations. Equivalence among administrations concerning the governance of the Bank is required to ensure that it remains focussed on shared interests.

51. It should be noted that if the Bank is to act as a lender to Welsh Local Authorities, given the devolved funding arrangements, the implications of such agreements will be a matter impacting the Welsh Government.

52. I have today written to the Economic Secretary to the Treasury to urge him 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.

Financial implications

53. There are no direct financial implications arising from this memorandum.

Conclusion

54. As set out above, the legislative consent of the Senedd Cymru is required for a number of clauses of the Bill. A number of these clauses 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.

Rebecca Evans MS
Minister for Finance and Local Government
25 May 2022

Timetable for consideration: Legislative Consent Memorandum on the UK Infrastructure Bank Bill

June 2022

On 7 June 2022, the Business Committee agreed, in accordance with Standing Order 29.4(i), to invite the Climate Change, Environment, and Infrastructure Committee, the Economy, Trade, and Rural Affairs Committee, the Finance Committee and the Legislation, Justice and Constitution Committee to consider and report on the Legislative Consent Memorandum on the UK Infrastructure Bank Bill.

In accordance with Standing Order 29.4(ii), the Business Committee agreed that the committees should report to the Senedd by 29 September 2022.



Rebecca Evans MS
Minister for Finance and Local Government

30 June 2022

Dear Rebecca,

Legislative Consent Memorandum for the UK Infrastructure Bank Bill

As you are aware, the Business Committee has referred the Legislative Consent Memorandum for the UK Infrastructure Bank Bill ('the LCM') to several committees for consideration, including the Climate Change, Environment and Infrastructure Committee ('the Committee').

At its meeting on 30 June, the Committee agreed I should write to you seeking further information and/or clarification on a number of matters, which are of specific interest to us, given our remit. Without prejudice to the Welsh Government's current policy position on the Bill, we would welcome a response from you on the following questions.

1. To what extent does the Bill, as drafted, reflect the Welsh Government's policy priorities in relation to infrastructure investment?
2. To what extent are you satisfied with the Bank's 'objectives' set out in section 2(3)? Are there any other objectives that you believe should be included, for example, tackling the decline in biodiversity?
3. How will the Bank take into account Welsh legislation, for example, the Well-being of Future Generations Act, when making its investment decisions?
4. Much of the detail relating to the Bank's core principles and parameters within which it will operate are set out in the UK Infrastructure Bank Framework Document ('the Framework Document'). To what extent are you satisfied that an appropriate balance has been struck between the detail contained in

the Bill and that left to the non-legally binding Framework Document, which has been agreed by the UK Government?

5. As noted in the LCM, the Framework Document 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”. Please set out your understanding of:

- the meaning of ‘significant harm’ in this context, and
- how the Bank will determine whether an investment will do ‘significant harm’.

6. Even though a specific investment decision may not meet the threshold of ‘significant harm’, it is possible that a series of decisions could be considered cumulatively to cause significant harm. Please set out your understanding of whether and how the Bank will consider the cumulative effect of its investment decisions.

7. To what extent are you satisfied with the meaning of ‘infrastructure’ set out in section 2(5)? Are there any other aspects/measures that you believe should be included within the meaning?

8. As drafted, the Bill would permit the Bank to provide financial assistance to infrastructure projects relating to roads. To what extent does this align with the Welsh Government’s current transport priorities and its sustainable transport hierarchy?

9. The UK Government has made clear its intention that the Bank should be permitted to provide financial assistance/loans for projects aimed at improving the energy efficiency within homes. Can you explain whether and how this will help support the Welsh Government to deliver its ambitions to decarbonise Wales’ housing stock?

10. The Framework Document sets out types of projects that should not be supported by the bank, including projects involving extraction, production, transportation and refining of crude oil, natural gas or thermal coal with very limited exemptions. Please set out your understanding of the ‘very limited exemptions’.

11. Are there any other types of projects that you believe the Bank should not be permitted to support?

12. In reference to the policy mentioned in question 8, the Explanatory Notes states that “This policy will be updated over time to reflect changes in government policy and regulatory standards”. How will the Welsh Government ensure these changes reflect policies or regulatory standards that fall within devolved competence?

13. The Bill creates delegated powers to enable the Treasury to change the Bank’s activities or the definition of infrastructure using secondary legislation under the affirmative procedure in the UK

Parliament. What arrangements are in place to ensure the Welsh Government (and other devolved governments) are consulted in advance of any such changes?

14. What role will the Senedd have in considering subordinate legislation to change the Bank's activities or the definition of infrastructure?

I am copying this letter to Huw Irranca-Davies MS, Chair, Legislation, Justice and Constitutional Affairs Committee; Paul Davies MS, Chair, Economy, Trade and Rural Affairs Committee; Peredur Owen Griffiths MS, Chair, Finance Committee; and Julie James MS, Minister for Climate Change.

I should be grateful if you could respond no later than 28 July 2022.

Yours sincerely,



Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

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