

# Supplementary Legislative Consent Memorandum

## UK Infrastructure Bank Bill

### Background

1. This memorandum has been lodged by John Swinney, Deputy First Minister, under Rule 9B.3.1(c)(i) of the Parliament's standing orders, and is supported by the Minister for Business, Trade, Tourism and Enterprise. The UK Infrastructure Bank Bill was introduced in the House of Lords 11 May 2022. The Bill as laid can be found on the UK Parliament website: [UK Infrastructure Bank Bill \[HL\] - Parliamentary Bills - UK Parliament](#).
2. The creation of a UK infrastructure Bank (UKIB) was first announced by the Chancellor at the Spending Review 2020. The UKIB was launched on a non-statutory basis on 17 June 2021, and has already begun making investments.
3. The first Legislative Consent Memorandum (LCM) was lodged on 2 September 2022. It addressed provisions in the Bill as introduced and can be found here: [LCM - UK Infrastructure Bank Bill](#). That LCM made clear an intention to consider a supplementary legislative consent memorandum should the UK Government provide the assurances requested by the Cabinet Secretary for Finance and the Economy in her letter to the Economic Secretary to the Treasury on 9 June 2022.
4. These assurances have now been provided along with amendments to the Bill that place a requirement on Treasury to consult with devolved nations in exercise of powers in areas of devolved competence.
5. Amendments to the provisions in the Bill were tabled by the UK Government for consideration at Committee stage in the House of Commons on 22 November 2022 and were agreed. These amendments make provisions that fall within the legislative competence of the Scottish Parliament, of which this supplementary legislative consent memorandum addresses. The amended Bill can be found on the UK Parliament website: [UK Infrastructure Bank Bill \[HL\] \(parliament.uk\)](#)

### Content of the UK Infrastructure Bank Bill

6. As set out in the Legislative Consent Memorandum lodged on 2 September – Memorandum no 1.

## Provisions which relate to Scotland

7. As set out in the Legislative Consent Memorandum lodged on 2 September, HM Treasury believe that six of the eleven clauses in the UK Infrastructure Bank Bill require legislative consent as they could fall within the legislative competence of the Scottish Parliament. These are, clause 2 (Objectives and functions), clause 3 (Strategic priorities and plans), clause 4 (Directions), clause 5 (Financial assistance), clause 8 (Duties of the bank) and clause 11 (Extent, commencement and short life). These clauses relate to infrastructure investment and may involve investment in areas such as rail, ports or bridges located solely within Scotland and therefore falling within devolved competence. Further details can be found in the LCM lodged on 2 September.

## Amendments agreed at House of Commons Committee Stage

8. The agreed amendments are set out below.

### Clause 2: Objectives and activities

9. This clause sets out the UKIB's objectives and activities, as well as the definition of infrastructure which is central to the scope of those activities. This clause also 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.

### Agreed amendments to Clause 2

10. The Treasury must consult the appropriate national authority before making provision in regulations under subsection 7 that would be within the legislative competence of:

- a) the Scottish Parliament, if contained in an Act of that Parliament
- b) Senedd Cymru, if contained in an Act of the Senedd, or
- c) The Northern Ireland Assembly, if contained in an Act of that Assembly made without the Secretary of State's consent,

apart from provision that is merely incidental to, or consequential on, provision which would be outside that competence.

11. This amendment would require Treasury to consult Scottish Ministers before making regulations under clause 2(7) that would contain provision within the legislative competence of the Scottish Government.

### Clause 3: Strategic priorities and plans

12. This clause requires the Treasury to prepare and lay before Parliament (at the latest six months after the Bill takes effect) a statement of strategic priorities for the

UKIB. Such a statement may be revised or replaced by the Treasury. The policy intention is that the statement will provide the Bank with a steer on where, in the Government's view, the Bank should prioritise and focus its activities. It is also the policy intention that the Government will not normally issue the steer more than once a Parliament.

13. The clause also requires the UKIB to secure that its articles of association provide for the Bank to publish and act in accordance with strategic plans, which must reflect the Treasury's strategic statement; and for the Bank to update those plans whenever the Treasury's strategic statement is revised or replaced. The policy intention is that the Bank will be expected to respond within a reasonable timeframe, taking into consideration the scale of the changes required in the response to any updates.

14. The Treasury's first (non-statutory) strategic statement for the UKIB was published on 18 March 2022. It provides further detail on how the UKIB should interpret its strategic objectives and encourages the Bank to prioritise opportunities that align with the Government's recent focus on energy security. The Bank responded to this in their first strategic plan, published in June 2022.

15. When the Bill takes effect the preparation and presentation to UK Parliament of the Treasury's strategic statements for the UKIB will become the subject of mandatory statutory obligations, and the UKIB's alignment with these will take place through the relevant provisions in its articles of association. It is expected that the Treasury will reissue the strategic statement published on 18 March 2022, as opposed to preparing a new strategic statement for the UKIB within six months of the Bill taking effect.

## Agreed amendments to Clause 3

16. The text of the amendment reads as follows:

“(4A) The Treasury must consult the appropriate national authority about any provision which the Treasury proposes to include in a statement under this section and which concerns a subject matter which would be within the legislative competence of:

- a) the Scottish Parliament, if contained in an Act of that Parliament
- b) Senedd Cymru, if contained in an Act of the Senedd, or
- c) The Northern Ireland Assembly, if contained in an Act of that Assembly made without the Secretary of State's consent,

(4B) The duty to consult imposed by subsection (4A) may be satisfied by consultation carried out before the passing of this Act.”

17. This amendment would require the Treasury to consult Scottish Ministers before including in a statement of strategic priorities for the UKIB any provision which the Treasury proposes that concerns a subject matter within the legislative competence of the Scottish Government.

## Clause 7: Directors: appointments and tenure

18. This clause deals with corporate governance issues relating to the appointment and tenure of directors for the UKIB.

## Agreed amendments to Clause 7

Clause 7, page 3, line 23, at end insert;

“the Board is to appoint one or more directors to be responsible for representing the interests of the appropriate national authorities.”

19. This amendment would require the UKIB’s Board to include one or more directors with responsibility for representing the interest of Scottish Ministers.

## Clause 10: Interpretation

20. This clause is standard in Bill provision and comprises interpretation.

## Agreed amendments to Clause 10

Clause 10, page 4, line 32, at end insert;

“Appropriate national authority means-

- a. the Scottish Ministers
- b. the Welsh Ministers, or
- c. the Department for Infrastructure in Northern Ireland”

21. This amendment would require the Bank's Board to include one or more directors with responsibility for representing the interests of the appropriate national authorities.

## Reasons for seeking a legislative consent motion

22. HM Treasury have provided their analysis of the Bill and believe that six of the eleven clauses require legislative consent from the Scottish Parliament. It is the UK Government’s view that only these clauses engage the legislative consent process. Accordingly on 10 May 2022 the Economic Secretary to the Treasury asked for legislative consent for the clauses identified (paragraph 7 of this document).

23. Since the statutory objectives of the UKIB have the potential to encroach on devolved areas of competence, the Scottish Government agrees that the Sewel Convention is engaged.

24. Although there is potential for competition over the deals and projects that the UKIB and Scottish National Investment Bank (SNIB) will pursue and a risk of divergence from the Scottish Government’s policy priorities (under clause 2) we

believe this can be mitigated through a Memorandum of Understanding (MOU), or similar administrative mechanism. Treasury have agreed to support an MOU, alongside the agreed amendments (para 9-20 of this document) and we have asked both Banks to work together to consider its terms. There is mutual benefit to ongoing communication between the UKIB and SNIB and coordination relating to projects, particularly as the pipeline develops. The relationship between both Banks continues to develop and will be further strengthened with a MOU or similar administrative mechanism.

25. In view of the above, we believe that a legislative consent motion should be granted for the UK Infrastructure Bank Bill to have full effect in Scotland and to optimise deal flow.

26. The Cabinet Secretary for Economy and Finance provided in-principle support to a legislative consent motion in her letter to the Economic Secretary to the Treasury on 9 June 2022 but considered that Scotland's position could be better reflected in the UKIB's activity and was clear that the following assurances were required before recommending consent to the Scottish Parliament:

- The Bill allows HM Treasury, by regulations made by statutory instrument, to amend the UKIB's functions or the meaning of infrastructure. This provides a risk of divergence in future with Scottish Government priorities. We sought to mitigate this risk by suggesting that the UKIB and SNIB seek to develop a Memorandum of Understanding with the intention that this should maintain high level alignment with SG priorities through SNIB's missions;
- In order to ensure investments deliver maximum impact we believe it is imperative that we are able to work together to identify and support appropriate infrastructure projects in Scotland. We expect this could be achieved by either placing individuals who have the relevant knowledge of the policy/project landscape in Scotland at board room level or ensuring that such individuals are included on relevant investment panels; and
- We sought assurances that there will be no impact on Barnett consequentials should the Scottish Parliament provide legislative consent.

27. These assurances have now been provided, in part, by tabling amendments to the Bill highlighted above (paragraphs 9 – 20)

## Consultation

28. We have raised the operation of the UKIB in Scotland with the SNIB and with relevant government agencies. The outcome of this consultation has been a commitment to ensure a strong relationship is established between both Banks and a commitment to agree a Memorandum of Understanding or similar administrative mechanism.

## Financial implications

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

30. The impact that the UKIB's activity may already be having or will have on the Scottish budget are not clear. We have assurances from HM Treasury that there will be no impact on financial implications for the Scottish Government in relation to an adjustment of Barnett consequential.

## Conclusion

31. As set out in the LCM lodged on 2 September 2022 and above, the legislative consent of the Scottish Parliament is required for a number of clauses in the Bill. Some of these clauses were of constitutional concern to the Scottish Government. Thus, despite the merits of the Bill, the Scottish Ministers' final position on whether to recommend consent was subject to the provision of assurances that Scotland's interests were properly reflected in the design and delivery of the UKIB's activity.

32. HM Treasury has now provided the requested assurances namely that Scotland's interests will be reflected in the design and delivery of the UKIB's activity, alignment between the UKIB and the SNIB via a Memorandum of Understanding and that there will be no impact on Barnett consequential raised by the Bill. In doing so they have agreed amendments to the Bill that place a requirement on Treasury to consult with devolved nations in exercise of powers in areas of devolved competence.

33. It is the view of the Scottish Government that it is now able to support legislative consent for the UK Infrastructure Bank Bill

## Draft Legislative Consent Motion

34. The draft motion, which will be lodged by the Deputy First Minister and Cabinet Secretary for Covid Recovery, is:

That the Parliament agrees that the relevant provisions of the UK Infrastructure Bank Bill, introduced in the House of Lords on 11 May 2021 and subsequently amended, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive function of the Scottish Ministers, should be considered by the UK Parliament.

Scottish Government  
December 2022



This Supplementary Legislative Consent Memorandum relates to the UK Infrastructure Bank Bill (UK legislation) and was lodged with the Scottish Parliament on 13 December 2022

# UK Infrastructure Bill – Supplementary Legislative Consent Memorandum

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