

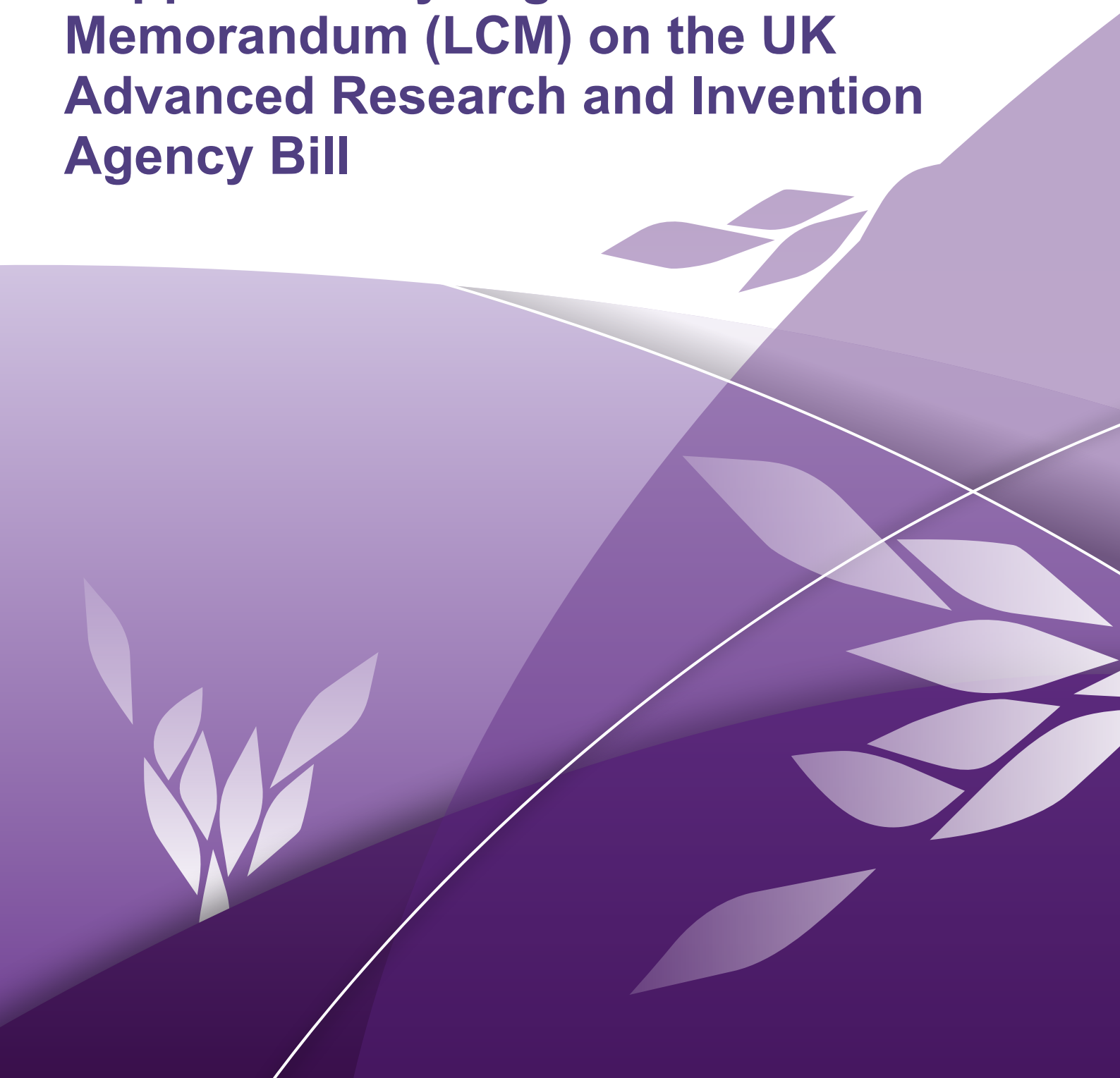


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Education, Children and Young People Committee

Supplementary Legislative Consent Memorandum (LCM) on the UK Advanced Research and Invention Agency Bill



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Education, Children and Young People Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills and matters relating to the Historical Abuse Inquiry within the responsibility of the Deputy First Minister.



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Introduction

1. The UK Government introduced the Advanced Research and Invention Agency (ARIA) Bill in the House of Commons on 2 March 2021 and the House of Lords on 8 June 2021. The Bill is currently at ‘Committee Stage’ in the House of Lords ¹. A [House of Lords Library briefing](#) on the Bill summarises the primary purposes of the Bill as follows—
 - ” Firstly, it would establish the Advanced Research and Invention Agency (ARIA). Secondly, it sets out ARIA’s functions. These are focused on conducting “ambitious” scientific research “with a tolerance to failure”. Thirdly, the bill would enable the secretary of state to make grants to ARIA and to provide it with funding ².
2. Both the Scottish and UK governments accept that the Bill engages devolved competence. The Scottish Government lodged a [Legislative Consent Memorandum \(LCM\)](#) on 2 September 2021 and a [Supplementary Legislative Consent Memorandum](#) on 18 November 2021. The Parliamentary Bureau designated the Committee as the ‘lead’ Committee scrutinising the LCM on 14 September 2021. Rule 9B.3.5 of the Scottish Parliament’s Standing Orders requires that the ‘lead’ Committee consider and report on the LCM. This report meets that requirement.

Interaction with Devolved Competence

3. The LCM summarises the clauses 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, as follows—
 - Clauses 1-4
 - Clauses 6-12
 - Schedule 1
 - Schedule 2
 - Schedule 3 paragraphs 5 and 11(2)
4. The Scottish and UK Government accept that the Bill engages devolved competence and that there is agreement on the provisions of the Bill that engage devolved competence.

The Committee recognises that the Advanced Research and Invention Agency Bill engages devolved competence and welcomes that the Scottish and UK government are agreed on where the Bill engages devolved competence.

Legislative Consent Memorandum

5. The Legislative Consent Memorandum lodged, in September, set out the Scottish Government's position, at that time, of not being able to recommend consent and accordingly did not bring forward a Legislative Consent Motion. The Scottish Government considered that whilst "most aspects of the Bill are not contentious"³ there were two principal reasons that the Scottish Government set out for not being able to recommend legislative consent. Firstly, Paragraph 5 of schedule 3 of the Bill, as Introduced, would have inserted a new reservation in the Scotland Act 1998 establishing ARIA as a reserved matter. The Scottish Government considered that—

” 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 Ministers⁴.

6. The Scottish Government stated that it "sees it as fundamental that paragraph 5 of schedule 3 is removed from the Bill". Secondly, the Scottish Government had concerns with regard to the proposed composition of the ARIA Board. Specifically, schedule 1 of the Bill includes the UK Government Chief Scientific Adviser as a non-executive member of the ARIA Board. The Scottish Government stated that "a request to give the Chief Scientific Adviser for Scotland an equivalent place was rejected by the UK Government"⁵. The Scottish Government went on to comment that-

” 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 Board⁶.

7. The Committee took evidence from the Minister for Higher Education and Further Education, Youth Employment and Training, Jamie Hepburn MSP, on 27 October 2021. The Minister stated that agreement had now been reached with the UK Government on the two issues raised in the LCM. Mr Hepburn commented on this agreement in the following terms—

” Two days ago, I agreed in principle with my UK counterpart, George Freeman, a memorandum of understanding and an amendment to remove the reservation from the ARIA bill. The memorandum of understanding will lay out very clearly the principle that ARIA will operate independently of ministerial direction from any Government. It will also contain arrangements for consultation of the chief scientific advisor for Scotland on ARIA as an alternative to board membership, which the Scottish Government has been willing to compromise on to come to a resolution⁷.

The Committee welcomes the approach taken by the Scottish and UK governments in seeking an agreed approach to the ARIA Bill prior to a decision being taken by the Scottish Parliament on legislative consent.

Supplementary Legislative Consent Memorandum

8. The Scottish Government lodged a Supplementary Legislative Consent Memorandum on 18 November 2021. The Supplementary Memorandum details the basis of the agreement which has been reached between the Scottish and UK governments on the Bill in relation to the two outstanding issues.

9. Firstly, the UK Government has agreed to remove the proposed reservation of ARIA, as a reserved matter in the Scotland Act 1998, from the Bill. On 15 November 2021, the UK Government tabled an amendment to this effect. The Explanatory Statement, accompanying the amendment, summarises the purpose of the amendment as follows—

” This amendment removes the amendments that would have treated the Advanced Research and Invention Agency as a reserved matter in relation to Scotland and Northern Ireland and funding provided to it through the Science and Technology Act 1965 as a reserved matter in Scotland ⁸ .

10. The amendment to the Bill was agreed in the House of Lords on 22 November 2021 ⁹ . It is understood that a separate amendment will remove the reservation applying to Wales.

11. Secondly, the UK Government has agreed a Memorandum of Understanding (MoU) with the devolved administrations in Scotland, Wales and Northern Ireland regarding the governance of ARIA. The MoU is provided at Annexe A to this report. With regard to the role of Chief Scientific Advisors on ARIA, the MoU states—

” The UK Government Chief Scientific Advisor holds a non-executive position on the ARIA Board, as an independent science advisor. They will consult with their counterparts in the Scottish and Welsh Governments and with an equivalent representative on behalf of the Northern Ireland Executive on input into ARIA.

This input will be provided through a new CSA forum of the GCSA and devolved administration CSAs that will meet twice annually. This formal addition to the existing CSA network will ensure the policy priorities of all four UK administrations are translated into scientific challenges and jointly communicated directly to ARIA's executive leadership. In keeping with the principles in paragraph 6, there is no obligation for ARIA to respond to these government priorities, as funding decisions will be taken by its independent executive leadership ¹⁰ .

12. The Scottish Government's LCM comments on the purpose of the MoU as follows—

” The Memorandum of Understanding sets out arrangements for regular consultation of the Chief Scientific Adviser for Scotland on ARIA matters has been agreed in principle with the UK Government. This will create ARIA under joint governance, in line with the fact that devolved administrations have overall responsibility for the excellence, impact and sustainability of research and innovation in the devolved nations ¹¹ .

13. As a result of agreement being reached on these two issues the Scottish Government is now recommending that the Scottish Parliament provide legislative consent to the ARIA Bill. The Supplementary LCM sets out the reason for this recommendation as follows—
- ” the Scottish Government noted most aspects of the Bill are not contentious but that it considered it fundamental that amendments were made to the provisions in the Bill that fail to provide for Scottish Government representation on the ARIA Board and that made ARIA a reserved matter. A Memorandum of Understanding between the UK Government and devolved administrations sets out arrangements for regular consultation of the Chief Scientific Adviser for Scotland which has helped to address concerns about SG representation on the ARIA Board and the tabled amendment removes the reservation of ARIA. As such, the Scottish Government now recommends the Scottish Parliament gives its consent to the Bill ¹² .

Conclusion

The Committee welcomes the agreement which has been reached with regard to the removal of the reservation from the ARIA Bill and arrangements enabling regular consultation with the Chief Scientific Adviser for Scotland to take place. The Committee commends the Scottish and UK governments for the constructive approach which has been taken to achieve agreement on these issues.

The Committee recommends that the Scottish Parliament provides legislative consent to the relevant provisions of Advanced Research and Invention Agency Bill.

Annexe A: Draft Memorandum of Understanding – ARIA Bill

14. Agreement on the Independence of the Advanced Research and Invention Agency (ARIA)

Between

The Secretary of State for Business, Energy and Industrial Strategy

The Scottish Government

The Welsh Government

The Northern Ireland Executive

Introduction

15. 1. This Agreement is between the following parties (the “Parties”):
 - a. The Secretary of State for Business, Energy and Industrial Strategy
 - b. The Scottish Government
 - c. The Welsh Government
 - d. The Northern Ireland Executive
16. The Advanced Research and Invention Agency (ARIA) [Act] establishes a new statutory corporation to fund scientific research. This will be a UK-wide independent research agency to deliver high-risk, high-reward funding for transformational scientific research.
17. This Agreement operates in accordance with the principles and provisions outlined in the Memorandum of Understanding and Supplementary Agreements on Devolution between the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive, and is consistent and complemented by other guidance on common working arrangements.
18. This Agreement sets out the principles underpinning the design of ARIA and the terms of the Parties’ engagement with it. It does not prejudice the legislative framework underpinning ARIA or research and innovation policy across the UK, including powers that are reserved, devolved, and those that are shared or exercisable concurrently in the Science and Technology Act 1965.
19. The Parties agree to use best endeavours to comply with the terms and the spirit of the Agreement. The Agreement provides a statement of political intent, but is not intended to create new, or override, existing legal relations obligations, or to be justiciable.

ARIA's design and benefits

20. The views of the research and innovation community throughout the UK have been reflected in ARIA's design. It is essential that ARIA complements, rather than duplicates, the UK's existing funding infrastructure. The community has sent strong, clear messages about how this should be done, based around the need for independence and risk appetite. The parties recognise the guiding principles of ARIA's design to be:
1. Strategic autonomy: ARIA will not be subject to ministerial direction of its funding choices. Instead, funding will be allocated by an independent leadership and Programme Managers with technical expertise.
 2. Operational autonomy: ARIA will be a small organisation with the independent leadership able to recruit in line with their own priorities, set its own procedures and create the institutional culture that best suits its objectives.
 3. Minimal bureaucracy: ARIA will not be subject to the layers of approval and review that might exist elsewhere in the funding system or in government. It will be agile, efficient and empowered to experiment with its structures, methods and processes.
21. The Parties agree that upholding these principles in all interactions with ARIA – with the overarching requirement that the involvement of all four administrations of the UK be minimised – will equip it to succeed, add most value to the funding landscape and bring the greatest benefit to the UK.

Maximum autonomy

22. The Parties recognise the importance of, and commit to protecting, the principles in Paragraph 6.
23. These principles are reflected in the ARIA [Act]. Unlike comparable bodies such as UK Research and Innovation, for ARIA there is no power of direction for government, and information rights are strictly limited. The Secretary of State for Business, Energy and Industrial Strategy's role is constrained to essential functions required in the establishment and delivery of ARIA, including national security, necessary appointments, and the provision of funding allocated by the UK Parliament.
24. As the Secretary of State alone is empowered by the ARIA [Act] to make grants to ARIA, the Department for Business, Energy and Industrial Strategy is the sponsoring department for ARIA.
25. This funding of ARIA requires a minimal level of accountability for the spending of public money that runs through the UK Government, with basic public body governance requirements including a Framework Agreement between ARIA and BEIS. This will balance the need for accountability to the public with the agency's need for autonomy in line with the principles in paragraph 6.
26. The Parties will not seek to direct ARIA's funding through legislation or other means,

or to confer functions on ARIA such that its operations would be constrained by administrative processes or bureaucratic review.

27. The Parties will facilitate ARIA's seamless operation throughout the UK, and will not seek to create differing obligations and responsibilities across the four administrations.
28. The Parties will not seek to take a greater role in determining ARIA's purpose, functions or priorities – through legislation or other means – without the approval of all the other Parties.

Engagement

29. While ARIA will have the greatest possible freedom to pursue its chosen avenues of research, it will complement and build on the science and innovation ecosystem that exists across the whole of the UK.
30. ARIA will share its completed annual report with the Parties in parallel each year for their information, enabling them to be shared with the respective legislatures if the Parties wish (the Secretary of State is required to lay the report before the UK Parliament).
31. The UK Government Chief Scientific Advisor holds a non-executive position on the ARIA Board, as an independent science advisor. They will consult with their counterparts in the Scottish and Welsh Governments and with an equivalent representative on behalf of the Northern Ireland Executive on input into ARIA.
32. This input will be provided through a new CSA forum of the GCSA and devolved administration CSAs that will meet twice annually. This formal addition to the existing CSA network will ensure the policy priorities of all four UK administrations are translated into scientific challenges and jointly communicated directly to ARIA's executive leadership. In keeping with the principles in paragraph 6, there is no obligation for ARIA to respond to these government priorities, as funding decisions will be taken by its independent executive leadership.

Disputes

33. The current Memorandum of Understanding and Supplementary Agreements on Devolution sets out a dispute procedure which will be followed should a dispute be unresolved through normal administrative channels.

- 1 Details of the Parliamentary passage of the Bill can be accessed at: [Advanced Research and Invention Agency Bill](#)
- 2 [House of Lords Library Briefing](#), Advanced Research and Invention Agency Bill, 17 June 2021, p.1
- 3 Scottish Government, Legislative Consent Memorandum: Advanced Research and Invention Agency Bill, September 2021, Para.39.
- 4 Ibid, para.28.
- 5 Ibid, para.12.
- 6 Ibid, para.12.
- 7 Official Report, [27 October 2021](#), Col.18.
- 8 House of Lords, HL Bill 24-I [Marshalled List for Grand Committee](#), 15 November 2021, p.9 [Amendment 37].
- 9 [Grand Committee \(subsequent day\) - House of Lords Business - UK Parliament](#)
- 10 UK Government (2021) 'Agreement on the Independence of the Advanced Research and Invention Agency (ARIA)', Department for Business, Energy and Industrial Strategy, p3.
- 11 Scottish Government, 'Supplementary Legislative Consent Memorandum: Advanced Research and Invention Agency Bill', p.2.
- 12 Ibid, para.19.

