

Report on the Enterprise and Business Committee's Consideration of the Legislative Consent Memorandum on the Enterprise Bill - Regulators' Code and Primary Authority

1. Summary of discussion

The Enterprise and Business Committee considered the Legislative Consent Memorandum (LCM) on the Enterprise Bill and the supporting advice from Legal Services at its meeting on 3 March 2016.

Members agreed that the Bill seeks to legislate in areas which are within the Assembly's legislative competence and on this basis a LCM is required.

The Committee are content with the Memorandum.

2. Background

The [Enterprise Bill](#) (the 'Bill') was introduced in the House of Lords on 16 September 2015 and is currently in the Committee stage in the same House.

The LCM which this note refers was laid in the Assembly on 5 February 2016. The Committee has previously considered a LCM in relation to the same Bill but for different clauses (small business commissioner and Disclosure of HMRC information in connection with Non-Domestic Rating).

The Bill is sponsored by the Department for Business, Innovation and Skills ("BIS"). The UK Government's stated policy objectives for the Bill are to:

- cement the UK's position as the best place in Europe to start and grow a business, by cutting red tape and making it easier for small businesses to resolve disputes quickly and easily; and
- reward entrepreneurship, generate jobs and higher wages for all, and offer people opportunity at every stage of their lives.

3. Provisions in the Bill for which consent is sought

The Committee discussed the following provisions in the Bill that make amendments to the two following Acts of Parliament and for which consent is sought:

3.1 Legislative and Regulatory Reform Act 2006 ('LRRRA 2006')

Clause 15 - The Bill places additional reporting duties on any person exercising certain regulatory functions ('other than a local authority') to have

regard to any code of practice issued by the Minister of the Crown. A code of practice ('the code') was issued in April 2014, called the Regulators Code.

The additional reporting duties will not apply to county or county borough councils in Wales; fire and rescue authorities in Wales and port authorities in Wales.

The current power of the Welsh Ministers under section 24 of the LRRRA enables the Welsh Ministers to specify functions exercisable *only* in Wales. An order by the Welsh Ministers is subject to the affirmative procedure and before making an Order the Welsh Ministers must consult those affected. The provisions in the Bill will give Welsh Ministers wider powers to make orders applying the regulators' principles and code of practice in relation to functions relating to:

- matters within the legislative competence of the National Assembly for Wales;
- or in respect of which functions are exercisable by the Welsh Ministers.

Clause 17 – Currently, Ofgem, Ofcom, the ORR and Ofwat are prevented from being subject to the duty to have regard to the better regulatory principles set out in the LRRRA 2006 and the Regulators Code. The Bill aims to repeal this. This repeal will not of itself subject these regulators to this duty but it removes a legislative barrier to doing so.

3.2 Regulatory Enforcement and Sanctions Act 2008 ('the RESA 2008 Act')

Clause 19 - provides for the extension of the application of the Primary Authority Scheme ('the Scheme') which was established by the 2008 Act. The Scheme enables the Secretary of State to nominate a local authority to be the primary authority for the exercise of a relevant (regulatory) function in relation to a regulated person.

Essentially, the Scheme encourages businesses to work with local authorities to ensure that regulation is consistently applied across local authority boundaries and that best practice is shared. Further detail about the Scheme can be found in paragraph 146 of the [Explanatory Notes](#) of the Bill.

Overall, the new provisions will extend the application of the Scheme by enabling the Secretary of State to prescribe in secondary legislation qualifying regulators other than local authorities that may be a primary authority, regulators that may provide support to primary authorities and regulators that will be required consistently with primary authority advice.

As para 26 of the LCM refers, Regulations under sections 22B, 2C, 28A and 28B as currently drafted, will require the consent of the Welsh Ministers to specify regulators whose functions relate only to Welsh Ministerial matters

or to specify regulatory functions so far as exercisable in Wales which relate to Welsh ministerial matters.

The amendments will require the consent of the Welsh Ministers to relate only to devolved Welsh matters or to specify regulatory functions so far as exercisable in relation to Wales which relate to devolved Welsh matters (which are matters falling with the Assembly's competence or in respect of which functions are exercisable by the Welsh Ministers).

4. Legislative Competence

The Committee received advice from the Legal Services of the National Assembly Wales. In their view the subject matter of the LCM is within the legislative competence of the National Assembly in so far as it relates to one or more of the subjects in Schedule 7, of the Government of Wales Act 2006.

The Committee agreed that the legislative consent of the Assembly is required in accordance with Standing Order 29.6 and also from the perspective of the UK Government in accordance with the revised Devolution Guidance Note 9.

Please note that this is a summary of the discussions on the provisions in the Bill. For more detail please see the [Explanatory Notes to the Bill](#) and in the [Supplementary Legislative Consent Memorandum \(Memorandum No 3\) for the Enterprise Bill in relation to Regulators' Code and Primary Authority provisions](#).