

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM  
(MEMORANDUM NO.3)**

**ENTERPRISE BILL: REGULATORS' CODE AND PRIMARY AUTHORITY**

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies, the legislative competence of the National Assembly.
2. The Enterprise Bill (the "Bill") was introduced in the House of Lords on 16 September 2015. The Bill can be found at:

<http://services.parliament.uk/bills/2015-16/enterprise.html>

**Summary of the Bill and its Policy Objectives**

3. The Bill is sponsored by the Department for Business, Innovation and Skills ("BIS"). The UK Government's main 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.
4. The Bill is in nine parts:
  - Part 1 makes provision to establish a Small Business Commissioner;
  - Part 2 provides for an extension of the Business Impact Target to include regulators and supports a shift in the way regulation is delivered by regulators through the Growth Duty and Regulators' Code;
  - Part 3 provides for the extension of the Primary Authority Scheme;
  - Part 4 makes provisions to introduce a target for the total number of apprentices working in public sector bodies and to prevent misuse of the 'Apprenticeship' term;

- Part 5 makes provisions to introduce a legal obligation for insurance claims to be paid within a reasonable timeframe;
- Part 6 provides for the Valuation Office Agency (“the VOA”) to share non-domestic rates information about properties and ratepayers with local government and also reforms the non-domestic rates appeals system;
- Part 7 makes provisions updating the Industrial Development Act 1982;
- Part 8 makes provisions to cap exit payments for public sector workers; and
- Part 9 makes general provisions in relation to consequential amendments, transitional and saving provisions and commencement.

### **Provisions in the Bill for which consent is sought**

#### *Amendments to the Legislative and Regulatory Reform Act 2006*

5. Section 22 of the Legislative and Regulatory Reform Act 2006 (“LRRRA”) places a duty on a person exercising certain regulatory functions to have regard to any code of practice issued by a Minister of the Crown under section 22. The current code of practice, issued in April 2014, is called the Regulators’ Code.
6. Clause 15 amends the LRRRA by requiring a regulator to report on the effect that the performance of the duty to have regard to the Code has had on the way it has exercised the relevant functions. The report must include an assessment of the views of businesses on the exercise of the duty, the impact on businesses and a description of the effect the regulator expects the duty to have on its relevant functions in the future.
7. Clause 15 also confers a power on a Minister of the Crown to issue guidance about the performance report and to request information from relevant regulators on how they are acting with regard to the Code and what businesses think about the effect of them doing so.
8. The additional reporting duties will not apply to county or county borough council in Wales; fire and rescue authorities in Wales; and port health authority in Wales.
9. The duty in section 22 to have regard to the Code applies when a person exercises a function that is specified by order under section 24. An amendment has been tabled to section 24 to alter the way in which the order-making power is conferred on the Welsh Ministers and the Minister of the Crown.

10. The current power of the Welsh Ministers under section 24 enables the Welsh Ministers to specify functions exercisable only in or as regards Wales. An amendment (NC1) was tabled in Parliament on 2 February and published on 3 February by the Rt. Hon Anna Soubry MP, Minister for Small Business, Industry and Enterprise to confer power on the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, if or to the extent that the function relates to matters—
  - within the legislative competence of the National Assembly for Wales, or
  - in respect of which functions are exercisable by the Welsh Ministers.
11. An order made by the Welsh Ministers under section 24 is subject to the affirmative procedure. Before making an order, the Welsh Ministers must consult the person whose functions are to be specified in the order and such other persons as they considers appropriate.
12. Clause 17 of the Bill repeals section 24(5) of the LRRRA. At present, section 24(5) prevents the regulatory functions of Ofgem, Ofcom, the Office of Rail Regulation and Ofwat from being subject to the duty to have regard to the better regulation principles in section 21 of the LRRRA and the Code under section 22. This repeal will not of itself subject these regulators to this duty but it removes a legislative barrier to doing so.
13. A stated objective of the UK Government is to help support entrepreneurs and promote business. The Welsh Government supports these aims. It is the view of the Welsh Government that the provision in clause 15 falls within the legislative competence of the National Assembly for Wales in so far as it relates to paragraph 4 of Schedule 7 of the Government of Wales Act 2006 which includes the subjects “Economic development and regeneration, including social development of communities, reclamation of derelict land and improvement of the environment” and “Promotion of business and competitiveness.”
14. It is the view of the Welsh Government that the provision in clause 17 falls within the legislative competence of the National Assembly for Wales in so far as it relates to “Water supply, water resources management (including reservoirs), water quality and representation of consumers of water and sewerage services” (paragraph 19 of Schedule 7 to the Government of Wales Act 2006) ; “Promotion of business and competitiveness” (paragraph 4 of Schedule 7) ; “Environmental protection including pollution, nuisances and hazardous substances” (paragraph 6 of Schedule 7).

*Amendments to the Regulatory Enforcement and Sanctions Act 2008*

15. Part 3 (clause 19) of the Bill provides for the extension of the Primary Authority scheme. The Bill substitutes Part 2 (new sections 22A to 30D) of the Regulatory Enforcement and Sanctions Act 2008 (“RESA”).
16. New section 22A defines a “regulated person” and “regulated group” for the purposes of Part 2. Under section 23A the Secretary of State may nominate a primary authority in relation to a regulated person or a regulated group.
17. New section 22B provides that a “qualifying regulator” is a regulator that the Secretary of State may nominate to act as a primary authority under section 23A. Section 22B provides that a local authority may be a qualifying regulator and also enables the Secretary of State to specify by regulations a regulator (a “specified regulator”) other than a local authority that may be a “qualifying regulator” for the purposes of Part 2.
18. New section 22C defines a “relevant function” for the purposes of Part 2 – this is a function that may be included in the primary authority’s partnership functions under section 23A. In relation to local authorities in England and Wales, the relevant functions to which Part 2 will apply are the same as those that are within the scope of the existing scheme. In relation to “specified regulators” a relevant function is a regulatory function exercised by that regulator and specified in regulations made by the Secretary of State. The regulations may only specify functions that are relevant functions in relation to local authorities in England and Wales or equivalent to such a function.
19. Under new section 23A, the Secretary of State may nominate a “qualifying regulator” to be the primary authority for the regulated persons and regulated groups. New sections 23B to 23E make provision about nomination of a primary authority, the coordinator of a regulated group and membership of a regulated group.
20. Section 24A to 26C contain provision about the functions of the primary authority and section 27A enables the primary authority to charge regulated persons and co-ordinator of regulated groups such fees that it considers reasonable.
21. Section 28A provides for certain “supporting regulators” with “designated functions” to do anything that they consider appropriate to support a primary authority in the preparation of advice and guidance under section 24A or an inspection plan under section 26A. A “supporting regulator” is a person who has regulatory functions and who is specified in regulations made by the Secretary of State. Designated functions are regulatory functions specified by the Secretary of State.
22. Section 28B provides that “complementary regulators” must act consistently with primary authority advice and guidance in the exercise of

their “designated functions” in relation to a regulated person or a member of a regulated group. A complementary regulator is a person who has regulatory functions and who is specified in regulations made by the Secretary of State

23. Section 28B also provides that the Secretary of State must specify in regulations the designated functions exercised by the complementary regulator.
24. Section 30A provides that the Secretary of State may give guidance to qualifying regulators, supporting regulators, complementary regulators and co-ordinators about the operation of Part 2. The Welsh Ministers must be consulted where guidance to supporting regulators makes provision about which functions are relevant to the exercise of a partnership function under section 28A.
25. Schedule 3, replacing Schedule 4 to RESA (new schedule 4A) sets out the procedure for references to the Secretary of State in relation to enforcement action.
26. Regulations under sections 22B, 22C, 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. Amendments 1 -9 and the new clause inserted by amendment NC2 tabled in Parliament on 2 February and published on 3 February by Rt. Hon Anna Soubry, Minister for Small Business, Industry and Enterprise amend these provisions to provide that such regulations will require the consent of the Welsh Ministers to specify regulators whose functions 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 within Assembly legislative competence or in respect of which functions are exercisable by the Welsh Ministers).
27. A stated intention by the UK Government of the provisions is to help support entrepreneurs and promote business and the Welsh Government supports these aims. It is the view of the Welsh Government that provisions within clause 19 of the Bill fall within the legislative competence of the National Assembly for Wales in so far as they relate to the subjects “economic regeneration and development” and “promotion of business and competitiveness” under paragraph 4 of Part 1, Schedule 7 to the Government of Wales Act 2006.
28. All the provisions outlined above in paragraphs 5 to 27 apply in relation to Wales.

## **Advantages of utilising this Bill rather than Assembly legislation**

29. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill because the legislation underpinning the Regulators' Code and Primary Authority scheme is set out in UK Parliament Acts and the Enterprise Bill amends those Acts. The provisions in the Acts apply across England and Wales (as well as Scotland and Northern Ireland) and making the provision in a UK Act therefore allows for a coherent and consistent approach.

## **Financial implications**

30. There are no financial implications of consenting to the provisions set out in the Bill.

**Leighton Andrews AM**  
**Minister for Public Services**  
**February 2016**