

Legislative Consent Memorandum

LEGISLATIVE CONSENT MEMORANDUM

CONSUMER RIGHTS BILL: AMENDMENT IN RELATION TO LETTING AGENCY FEES

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 Consumer Rights Bill (the “Bill”) was introduced in the House of Commons on 23 January 2014. The Bill can be found at: <http://services.parliament.uk/bills/2014-15/consumerrights.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Business, Innovation and Skills.
4. The UK Government’s policy objectives for the Bill are to clarify and simplify consumer rights, to make provision about investigatory powers for the regulation of traders and to make consumers better informed and better protected.
5. The Bill sets out a framework that consolidates in one place, key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts. In addition, the Bill introduces easier routes for consumers and small and medium sized enterprises (“SMEs”) to challenge anti-competitive behaviour through the Competition Appeal Tribunal (“CAT”).
6. The Bill also consolidates enforcers’ powers, as listed in Schedule 5, to investigate potential breaches of consumer law. The Bill clarifies that certain enforcers (Trading Standards) can operate across local authority boundaries. It will also give the civil courts and public enforcers greater flexibility to take the most appropriate action for consumers when dealing with breaches or potential breaches of consumer law. Additionally, it imposes a duty on letting agents to publish their fees.
7. The Bill is in three Parts:
 - Consumer contracts for goods, digital content and services;
 - Unfair terms; and
 - Miscellaneous and general, including investigatory powers, amendment of the Weights and Measures (Packaged Goods)

Regulations 2006, Enterprise Act 2002: enhanced consumer measures and other enforcement; private actions in competition law; and a duty on letting agents to publicise fees.

Provisions in the Bill for which consent is sought

8. The consent of the Assembly is sought to the amendments to the Consumer Rights Bill, tabled by Baroness Neville-Rolfe on 7 October 2014.
9. These amendments will (among other things) amend Chapter 3 of Part 3 of the Bill. Chapter 3 concerns the duty on letting agents to publicise their fees. In summary, the duty is that letting agents must display or publish, prominently at each of their premises, and on their website, a list of their relevant fees (inclusive of tax) including a description of what service, cost or purpose each fee covers.
10. "Relevant fees" are those payable to the letting agent by a landlord or tenant in connection with letting agency or management work in connection with assured tenancies. The list should also make clear whether the fee relates to each tenant under a tenancy or to each property. Where the amount of the fee cannot be reasonably determined in advance, agents must provide a description of how that fee is calculated.
11. The intention is that local authorities will enforce the requirement through the provision of a civil penalty which is not to exceed £5,000 where an agent is in breach of the duty. Appeals will be heard by a court or tribunal against the imposition of the civil penalty.
12. Among other things, the amendments will provide that Chapter 3, and the related new Schedule will apply in relation to Wales. In addition, the power to commence these provisions, in relation to Wales, is given to the Welsh Ministers.
13. The amendments include the following powers for the Welsh Ministers to make secondary legislation:
 - Clause 81(5) – the power to specify other ways in which letting agents must publicise fees and the details thereof (negative resolution procedure).
 - Clause 82(3)(b) – the power to specify those who are not letting agents for the purposes of the requirement to publicise charges (negative resolution procedure).
 - Clause 83(2)(d) – the power to specify fees, etc. which are exempt from the publicity requirement (negative resolution procedure).
 - New clause (Enforcement of the duty) to be inserted after clause 84 and replacing clause 85. In paragraph (12) of that new clause, the power to make regulations to (a) amend any provisions of the new clause or the related new schedule (Duty of letting agents to

publicise fees) in their application to local weights and measures authorities in Wales and to (b) make consequential amendments to Schedule 5 (Investigatory powers etc.) (affirmative resolution procedure).

14. A 'negative resolution procedure' statutory instrument is one which:
 - (i) is subject to annulment in pursuance of a resolution of the Assembly; or
 - (ii) is laid in draft but cannot be made if the draft is disapproved.
15. An 'affirmative resolution procedure' statutory instrument or draft statutory instrument is one which is laid before the Assembly and which, unless the Assembly by resolution approves it, cannot:
 - (i) be made;
 - (ii) come into force; or
 - (iii) remain in force beyond the period specified in the enactment conferring the power to make the instrument.
16. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to letting of residential tenancies under paragraph 11 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

17. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.
18. It will benefit tenants and prospective tenants in Wales by placing a specific duty on letting agents to display or publish their fees. This will help ensure transparency of letting agents' fees. It will also be an improvement on the current situation where all that exists is consumer rights legislation and guidance which recommend that traders are clear and upfront about the fees which they charge.
19. The Welsh Government already recognised the need for letting fees to be made more transparent. To address this, it was planned to include a requirement for agents to publicise their fees, in the Code of Practice relating to a licence given in relation to Part 1 of the Housing (Wales) Act 2014. We have now decided not to go ahead with this as the amendment to the Consumer Rights Bill provides a stronger legislative mechanism to achieve our aim.
20. Introducing the provisions on an England and Wales basis, through the Consumer Rights Bill, will ensure tenants and prospective tenants benefit from the new legislation at the same time as their counterparts in England. If the Bill did not apply to Wales there would be a delay in

legislating to achieve this as there is currently no suitable Assembly Bill available to place the duty on letting agents.

21. Introducing these provisions on an England and Wales basis should also ensure that tenants are not confused by letting agents having a duty to advertise their fees in England and not Wales, especially in cross-border situations. It will also avoid any confusion as to where enforcement would lie should letting agents work across borders.

Financial implications

22. There are no financial implications for the Welsh Government.

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