

# **Environment and Sustainability Committee**

Report on the Growth and Infrastructure Bill – Legislative Consent Memorandum (deemed planning permission for generating consents)

## Introduction

On 17 January 2013, the Environment and Sustainability Committee considered a legislative consent memorandum that relates to provisions in the UK Growth and Infrastructure Bill that relate to deemed planning permission for generating consents.

It agreed to report to the National Assembly for Wales that **it has no objection to the use of this legislative consent motion, as proposed by the Welsh Government.**

The remainder of this report sets out the background to this decision.

Links to all of the documents referred to in this paper are provided in the final section: 'Sources and additional information'.

## Background

The UK Government's - Growth and Infrastructure ('the Bill') is currently being considered by the UK Parliament.

Sections of this Bill seek to legislate in areas of competence devolved to the National Assembly for Wales. Convention requires that the National Assembly for Wales ('the Assembly') considers consenting to this. The Assembly does this through considering a legislative consent motion tabled by the Welsh Government.

Further information on legislative consent motions is provided in the Research Service's quick guide *The Constitution Series: 6 Legislative Consent Motions*.

The legislative consent motion is drafted as follows:

To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions relating to deemed planning permission for generating consents under sections 36 and 37 of the Electricity Act 1989, which have been brought forward in the Growth and Infrastructure Bill, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.

The Welsh Government published a legislative consent memorandum ('the memorandum') on 13 December 2013 that explains this in more detail.

Principally, the memorandum sets out that the provisions in the Bill for which consent is sought are contained in clauses 19(1) to (4) (consents under Electricity Act 1989: deemed planning permission), as introduced to Parliament on 18 October 2012 and amended on 12 December 2012. The Welsh Government's Explanatory Memorandum wrongly refers to clauses 18(1) to (4).

These elements of the Bill relate to sections 36 and 37 of the Electricity Act 1989, and seek to amend section 90 of the Town and Country Planning Act 1990.

## Policy intent

The memorandum sets out the policy intent in more detail. A concise summary is provided in the box below.

## **Summary of policy intent**

The memorandum states that:

'[...] the Bill amends section 90 of the Town and Country Planning Act 1990 so that the Secretary of State has power to direct that either an existing deemed planning permission is varied or a new deemed planning permission is granted when either the new power to vary a section 36 consent or the existing power to vary a section 37 consent is exercised in England or Wales (including the waters adjacent to England and Wales and a Renewable Energy Zone). Local authorities (and the Welsh Ministers on call-in) retain their power to vary the conditions of a deemed planning permission.'

## **Stakeholder views**

To assist the Committee with its consideration of the memorandum, the Research Service sought an informal view from the Welsh Local Government Association ('the WLGA').

No concerns were raised by the WLGA.

## **Process for consideration**

The Bill as published did not contain the above clauses requiring the legislative consent of the Assembly. In the introduced version these provisions applied to England only. The amendments were only introduced by the UK Government at the Third Reading in the Commons. The LCM was laid before the Assembly by the Welsh Government on 13 December 2012. The amendments to the Bill were approved by the House of Commons on 17 December 2012.

The Business Committee remitted this memorandum to the Environment and Sustainability Committee for consideration. In doing so, the Business Committee is obliged to set a timetable for the consideration of the memorandum.

The Business Committee agreed that the Environment and Sustainability Committee should report on the memorandum by the 31 January 2013.

The legislative consent motion will be considered by the Assembly in Plenary on 5 February 2013.

## **Conclusion**

The evidence received did not conflict with the Welsh Government's statement in the memorandum that:

'As things stand there is no Secretary of State power to vary deemed planning permissions, so the normal Town and Country Planning Act 1990 (TCPA 1990) regime applies as it does to any other planning permission. This means that the promoter can apply to the local planning authority to have planning conditions varied (section 73 of the Town and Country Planning Act 1990). If they need anything further (e.g. a change to the description of the development permitted) then they can apply to the local planning authority for a fresh permission. Both of these options can be protracted and expensive for the promoter.'

Utilising the Bill will allow the Secretary of State to vary the deemed planning permission conditions (or issue a new one) alongside the variation of the section 36 or section 37 consent. We regard this as a pragmatic step in the interests of Welsh Government energy policy objectives which does not prejudice the Welsh Government's overall stance on energy consenting.

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 appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales'

That the Environment and Sustainability Committee agreed to report to the Assembly that it has no objection to the use of this legislative consent motion, as proposed by the Welsh Government.

### Sources and additional information

- A copy of the **legislative consent memorandum** is available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=241568&ds=1/2013>
- The **Growth and Infrastructure Bill** is available on the UK Parliament's website at: <http://services.parliament.uk/bills/2012-13/growthandinfrastructure.html>
- The **Electricity Act 1989** is available on the legislation.gov.uk website: <http://www.legislation.gov.uk/ukpga/1989/29/contents>
- The **Town and Country Planning Act 1990** is available on the legislation.gov.uk website: <http://www.legislation.gov.uk/ukpga/1990/8/contents>
- The **Research Service's Quick Guide** *The Constitution Series: 6 Legislative Consent Motions* is available at: <http://www.assemblywales.org/qg07-0006.pdf>
- **Standing Orders** can be viewed at <http://www.assemblywales.org/bus-home/bus-assembly-guidance.htm> (Standing Order 29 sets out the process for considering a legislative consent memorandum).