

# **Environment and Sustainability Committee**

Report on the Water Bill – Legislative Consent

Memorandum

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December 2013

## 1. Introduction

- 1.1 On 20 November 2013, the Environment and Sustainability Committee considered a legislative consent memorandum that relates to provisions in the UK Water Bill.
- 1.2 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.**
- 1.3 The remainder of this report sets out the background to this decision.
- 1.4 The Assembly's Legal Services and Research Service have provided a comprehensive briefing note for the Environment and Sustainability Committee. This note is [annexed to this report](#).
- 1.5 Links to all of the documents referred to in this report are provided in the final section: 'Sources and additional information'.

## 2. Context

- 2.1 The UK Government's Water Bill ('the Bill') is currently being considered by the UK Parliament.
- 2.2 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.
- 2.3 The Welsh Government published a legislative consent memorandum ('the memorandum') on 18 September 2013 that explains this in more detail.
- 2.4 Principally, the memorandum sets out that the provisions in the Bill for which consent is sought are contained within 31 clauses and five schedules. These are listed in the memorandum and are not repeated here.

## 3. Policy intent

- 3.1 The memorandum sets out the policy intent in more detail. A concise summary is provided in sections four and five below. Please refer to [the Legal](#)

[Service and Research Service paper annexed to this report](#) for a more detailed explanation. The information below largely repeats sections one to three of the note.

#### **4. The Water Bill**

- 4.1 The Water Bill (“the Bill”) is sponsored by the UK Government’s Department for Environment, Food and Rural Affairs (“Defra”) and was introduced in the House of Commons on 27 June 2013.
- 4.2 The UK Government’s policy objectives for the Bill are to reform the water industry to make it more innovative and responsive to customers and to increase its resilience to natural hazards such as droughts or floods. This includes enabling business and other non-household customers to switch their water and sewage suppliers, and enabling multi-site operators to tender for one supplier across Great Britain.
- 4.3 The Bill will also include measures to deal with the affordability of flood insurance, following a public consultation on the proposed approach.
- 4.4 One of the main differences between the Draft Water Bill and the Bill as introduced, is that the Bill gives Welsh Ministers powers in relation to the whole of the area served by water and sewerage undertakers wholly or mainly in Wales. This would of course include parts of England. This follows the current devolution of Welsh Ministers’ executive functions. The Draft Water Bill proposed that Welsh Ministers would only have powers over the Welsh parts of areas served by water and sewerage undertakers wholly or mainly in Wales. Whilst this would have meant that the Bill would have reflected the legislative competence of the Assembly, it might have caused difficulties in practice. For example, Dŵr Cymru and Dee Valley Water would have had to operate two different regimes dependent on whether their customers lived in Wales or England. The current position will not avoid the situation where there are customers of Severn Trent who live in Wales who may be subject to a different regime. However this reflects the situation as it presently exists.
- 4.5 The appointment areas of the cross-border water and sewerage undertakers in Wales are shown in the map below.



## 5. Welsh Government Policy

- 5.1 The Committee undertook an inquiry into competition and affordability in the water industry earlier in the year. During the inquiry the Minister reiterated the Welsh Government's position that it did not support introducing competition into the non-household market in Wales. He stated in [oral evidence \(paragraph 5\)](#) that:

We do not want to follow the direction outlined by the Westminster Government of being overly dependent on competition within the water supply system. ... I think that, in Dŵr Cymru, we have a company that is doing an excellent job, and that, in Glas Cymru, we have a framework and a supply system that works for the people of Wales, which has brought investment into that system and has reduced bills. ... So, we would not want

to see the kind of competition that the Westminster Government is considering at present for our system in Wales.

- 5.2 Whilst the current Welsh Government's position is that it does not agree with competition, if enacted as currently drafted, the Bill will enable Ministers in future Welsh Governments to introduce competition if they so wish.

## 6. Process for consideration

- 6.1 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.
- 6.2 The Business Committee agreed that the Environment and Sustainability Committee should report on the memorandum by the 5 December 2013.
- 6.3 The legislative consent motion will be considered by the Assembly in Plenary on 10 September 2013.

## 7. Conclusions

- 7.1 The devolution settlement in relation to water is complicated. Many of the provisions of the Bill for which consent is sought contain a mix of devolved and non-devolved matters. The explanation of the Bill's clauses is taken from the explanatory notes accompanying the Bill which of course include both the devolved and non-devolved matters. This complicates the consideration of the Memorandum further. **It would be of significant assistance to the Committee if the Minister could consider, in any future memoranda on the subject of water, highlighting only those specific parts of a Bill's clauses which he considers to be within the legislative competence of the Assembly.**
- 7.2 Standing order 30.2 requires provisions of the Bill which modify Welsh Minister's executive functions, and are not the subject of the Memorandum, to be separately notified to the Assembly. The Minister, in his statement on 16 October 2013, has drawn the Assembly's attention to a number of Clauses in the Bill, to include Clause 5. Clause 5 introduces Schedule 5. The provisions taken together would extend the new competition regime in the areas of water undertakers wholly or mainly in Wales. Although it would not be within the Assembly's competence to introduce the new system of licensing proposed by the Bill, some of the changes made by Schedule 5 do

make provision for a purpose which is within the legislative competence of the Assembly which is why consent is sought for Schedule 5. It is unclear however why Clause 5 has been referred to in the Minister's statement, but not in the Memorandum when Schedule 5 is dependent on Clause 5 being commenced. **Assembly Members may wish to clarify this with the Minister during the plenary debate.**

7.3 Part 4 of the Bill provides a placeholder (or holding) clause to address the availability and affordability of insurance for UK households at high risk of flooding. The UK Government's consultation on draft clauses to be included in the Bill ended on 20 September 2013. As 'insurance' is an exception to the Assembly's legislative competence, it is unclear why Part 4 of the Bill is referred to in the Memorandum. **Assembly Members may wish to clarify with the Minister during the plenary debate, the nature and extent of any discussions he has had with the UK Government over the draft clauses on flood insurance and whether a further memorandum is anticipated.**

7.4 Whilst the Environment and Sustainability Committee has sought some further information, it has 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=250033&ds=9/2013>
- The **statement made by the Minister for Natural Resources and Food** on 16 October 2013 is available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/gen-ld9520-e.pdf?langoption=3&ttl=GEN-LD9520%20-%20The%20Water%20Bill>
- The **Water Bill** is available on the UK Parliament's website at: <http://services.parliament.uk/bills/2013-14/water.html>
- Details of the Environment and Sustainability Committee's inquiry and report on **Water Policy in Wales** (August 2013) is available at: <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Id=5272>

- 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)

**ENVIRONMENT AND SUSTAINABILITY COMMITTEE**

This cover sheet summarises the main points contained in the attached briefing note from Legal Services and the Research Service

**LEGISLATIVE CONSENT MEMORANDUM – Water Bill**

Whilst the Bill contains a mixture of devolved and non-devolved matters, Legal Services are satisfied that it makes relevant provision in relation to Wales for a purpose within the legislative competence of the Assembly. The Minister considers that the Bill represents the most practicable and proportionate legislative vehicle to enable the provisions to apply in relation to Wales, given that the water and sewerage industry is regulated on a ‘wholly or mainly’ basis.

The Committee may wish to consider the following points:

- Given the complicated nature of the devolution settlement in relation to water, coupled with the fact that many of the provisions of the Bill for which consent is sought contain a mix of devolved and non-devolved matters, the Committee may wish to request that the Minister give consideration in any future Memoranda on the subject of water, to highlighting only those specific parts of a Bill’s clauses which are within the legislative competence of the Assembly.
- The Minister has drawn the Assembly’s attention to Clause 5 of the Bill, within his statement referred to in paragraph 4.2 below. Whilst it would not be within the Assembly’s competence to introduce the new system of licensing proposed by Clause 1 of the Bill, it would appear that consent is sought within the Memorandum for Schedule 5 because some of the changes proposed by the Schedule make provision for a purpose which is within the legislative competence of the Assembly.



The amendments in Schedule 5 amend or repeal words of the WIA, as amended by other provisions in the Bill, that prevent the new water supply authorisations and the new sewerage licences from applying to undertakers whose areas are wholly or mainly in Wales. As Clause 5 introduces Schedule 5 it is unclear why it has been referred to in the statement, but not the Memorandum. The Committee may wish to raise this with the Minister.

- The Committee may wish to clarify with the Minister the nature and extent of any discussions he has had with the UK Government over the draft clauses on flood insurance and whether a further Memorandum is anticipated.

**ENVIRONMENT AND SUSTAINABILITY COMMITTEE**  
**Briefing Note**

**LEGISLATIVE CONSENT MEMORANDUM – Water Bill**

**1.0 Background**

1.1 On 18th September 2013, Alun Davies AM, Minister for Natural Resources and Food (“the Minister”) laid a Legislative Consent Memorandum (“Memorandum”) concerning the Water Bill (“the Bill”) pursuant to Standing Order 29.2. The Memorandum was considered on the 24th September 2013, by the Business Committee, which agreed to refer it to the Environment and Sustainability Committee.

1.2 The Committee must report to the Assembly by no later than 5th December 2013.

**2.0 The Bill**

2.1 The Water Bill (“the Bill”) is sponsored by the UK Government’s Department for Environment, Food and Rural Affairs (“Defra”) and was introduced in the House of Commons on 27 June 2013. The Bill can be found at:

<http://services.parliament.uk/bills/2013-14/water/documents.html>

2.2 The UK Government’s policy objectives for the Bill are to reform the water industry to make it more innovative and responsive to customers and to increase its resilience to natural hazards such as droughts or floods. This includes enabling business and other non-household customers to switch their water and sewage suppliers, and enabling multi-site operators to tender for one supplier across Great Britain.

2.3 The Bill will also include measures to deal with the affordability of flood insurance, following a public consultation on the proposed approach.

2.4 One of the main differences between the Draft Water Bill and the Bill as introduced, is that the Bill gives Welsh Ministers powers in relation to the whole of the area served by water and sewerage undertakers wholly or mainly in Wales. This would of course include parts of England. This follows the current devolution of Welsh Ministers' executive functions. The Committee may recall that the Draft Water Bill proposed that Welsh Ministers would only have powers over the Welsh parts of areas served by water and sewerage undertakers wholly or mainly in Wales. Whilst this would have meant that the Bill would have reflected the legislative competence of the Assembly, it might have caused difficulties in practice. For example, Dwr Cymru and Dee Valley Water would have had to operate two different regimes dependent on whether their customers lived in Wales or England. The current position will not avoid the situation where there are customers of Severn Trent who live in Wales who may be subject to a different regime. However this reflects the situation as it presently exists.

2.5 The Appointment Areas of the cross-border Water and Sewerage Undertakers in Wales are shown in the map below.



### 3.0 Welsh Government Policy Position

3.1 Members will recall that the Committee undertook an inquiry into competition and affordability in the water industry earlier in the year. During the inquiry the Minister reiterated the Welsh Government's position that it did not support introducing competition into the non-household market in Wales. He stated in [oral evidence \(paragraph 5\)](#) that:

We do not want to follow the direction outlined by the Westminster Government of being overly dependent on competition within the water supply system. ... I think that, in Dŵr Cymru, we have a company that is doing an excellent job, and that, in Glas Cymru, we have a framework and a supply system that works for the people of Wales, which has brought investment into that system and has reduced bills. ... So,

we would not want to see the kind of competition that the Westminster Government is considering at present for our system in Wales.

3.2 Whilst the current Welsh Government's position is that it does not agree with competition, if enacted as currently drafted, the Bill will enable Ministers in future Welsh Governments to introduce competition if they so wish. As referred to in paragraph 6.11 it is not currently clear whether the Minister is seeking the Assembly's consent to the provisions that introduce competition.

#### **4.0 Deciding whether a Memorandum is necessary**

4.1 Standing Order 29.2 prescribes that a Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the Assembly, if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within or modifies the legislative competence of the Assembly.

4.2 Where a UK Bill makes provision in relation to Wales which modifies Welsh Ministers' functions, but which does not fall to be considered under Standing Order 29, Standing Order 30.2 requires the Government to lay a written statement before the Assembly. The Minister laid such a [statement](#) before the Assembly on 16<sup>th</sup> October 2013. The statement is necessary because the Bill modifies Welsh Ministers' executive functions. The Assembly is not required to consent to the notification.

#### **5.0 Legislative and Executive Competence over Water**

5.1 Paragraph 19 of Schedule 7 to the Government of Wales Act 2006 ("GOWA") devolves the following to the Assembly, water supply, water resources management (including reservoirs), water quality, the representation of consumers of water and sewerage services and flood risk management and coastal protection.

5.2 The regulation and appointment of any water undertaker whose area is not wholly or mainly in Wales is non-devolved.

5.3 There is also an exception for the licensing and regulation of licensed water suppliers within the meaning of the Water Industry Act 1991 ("WIA"),

apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.

5.4 Responsibility for licensing and regulating sewerage services is not devolved.

5.5 Under the WIA, executive competence in relation to the activities of the water and sewerage industry has largely been devolved in relation to undertakers wholly or mainly in Wales, although there are exceptions to this.

5.6 What this means in very simple practical terms is that whilst Welsh Ministers can for example make certain secondary legislation in relation to the whole of Dwr Cymru or Dee Valley Water's appointment or supply area, (thus affecting customers in England), the legislative competence of the Assembly would not necessarily enable the Assembly to make primary legislation on the same matter. This is because Acts of the Assembly may not apply otherwise in relation to Wales (subject to Section 108 (5) of the Government of Wales Act 2006)

## **6.0 Provisions in the bill for which consent is sought**

6.1 The provisions in the Bill for which consent is sought are set out from paragraph 5 of the Memorandum onwards. They comprise 31 Clauses and 5 Schedules. The Memorandum provides a more detailed explanation of all the clauses for which consent is sought. The explanation has in the main been taken from the explanatory notes accompanying the Bill.

**6.2 Given the complicated nature of the devolution settlement in relation to water, coupled with the fact that many of the provisions of the Bill for which consent is sought contain a mix of devolved and non-devolved matters, the Committee may wish to request that the Minister give consideration in any future Memoranda on the subject of water, to highlighting only those specific parts of a Bill's clauses which are within the legislative competence of the Assembly.**

Part 1 – Water Industry – Clauses 3, 8,10,12,13,16–28,31–34, 36–38, 39, Schedule 2,5,6.7

## Chapter 1 Water supply licences and sewerage licences – Clause 3, Schedule 2 & 5

6.3 This Chapter focuses on expansion of the water supply licensing (WSL) regime, introduction of sewerage licences and the creation of a cross-border retail market between England and Wales and Scotland.

6.4 Chapter 1 amends the WIA by expanding and revising the current WSL regime and adding a sewerage licensing regime.

6.5 Under the Current WSL system, if a non-householder customer is eligible they may choose to switch from their current supplier to a water supply licensee. One of the eligibility criteria is that the total quantity of the water to be supplied to the relevant premises is 50 million litres of water per annum for premises supplied by an undertaker whose area is wholly or mainly in Wales. The limit is 5 million litres in England.

6.6 Prospective licensees can currently apply for two different types of licence:–

- **Retail supply licence:** This allows the licensee to purchase a wholesale supply from an appointed water company's supply system and supply the premises of its customers.
- **Combined supply licence:** Enables the licensee to introduce water into a supply system and supply the premises of its customers.

6.7 Under the current WSL system a licensee can therefore only input water if it also provides the 'retail' element of the service.

6.8 The two important changes made by Chapter 1 of the Bill are the power to repeal the current threshold requirements within the WIA (i.e. the 50 million litres criteria) and changes to licensing which will enable a licensee to input water even if it is not also providing the 'retail' element.

6.9 It is the intention of the UK Government, that the provisions bringing into force the new licensing system and the repeal of the current threshold requirement will take place at the same time for customers of water undertakers based wholly or mainly in England, which will include Welsh customers of Severn Trent.

6.10 In areas served by undertakers based wholly or mainly in Wales, the system will remain unchanged, save that 'retail' licences will now be known as 'restricted retail' licences and 'combined licences' as 'supplementary licences'. This will remain the position until Welsh Ministers commence Clause 5 and Schedule 5 of the Bill by Order.

6.11 The Minister has drawn the Assembly's attention to Clause 5 of the Bill, within his statement referred to in paragraph 4.2 above. Whilst it would not be within the Assembly's competence to introduce the new system of licensing proposed by Clause 1 of the Bill, it would appear that consent is sought within the Memorandum for Schedule 5 because some of the changes proposed by the Schedule make provision for a purpose which is within the legislative competence of the Assembly. The amendments in Schedule 5 amend or repeal words of the WIA, as amended by other provisions in the Bill, that prevent the new water supply authorisations and the new sewerage licences from applying to undertakers whose areas are wholly or mainly in Wales. As Clause 5 introduces Schedule 5 it is unclear why it has been referred to in the statement, but not the Memorandum. The Committee may wish to raise this with the Minister.

6.12 Clause 3 of the Bill would allow for the repeal of the threshold requirement (50 million litres) by Order of the Welsh Ministers for premises supplied by the system of undertakers whose area is wholly or mainly in Wales. Any Orders made under this section would be subject to the **affirmative** procedure.

6.13 Schedule 2 introduces amendments to the WIA to widen the duties of water undertakers to take into account new authorisations permitted under the water supply licence. New section 66A of the WIA which is introduced by the Schedule provides that a water undertaker can refuse to allow use of its supply system where the licensee has failed to secure a water supply, or the



water fittings in question are not compliant with any regulations made by Welsh Ministers under section 74 of the WIA (regulations for preventing contamination, waste water etc.). Any regulations made under section 74 are subject to the **negative** procedure.

6.14 Finally, in addition, to facilitate a cross-border retail market between England and Wales and Scotland, Chapter 1 of the Bill amends the WIA and equivalent Scots Law. This will allow Ofwat and the Water Industry Commission for Scotland (WICS) to accept a single application for a water services licence in each other's jurisdiction.

## **Chapter 2 Water and Sewerage Undertakers – Clauses 8 –12, 16–17, 24 & 28**

6.15 This Chapter focuses on:–

- arrangements between undertakers,
- inset appointments (i.e. where one water company replaces another as the supplier of water and/or sewerage services within a specified geographical area,
- duties of Ofwat and the Competition and Markets Authority on mergers,
- the Secretary of State and the Welsh Ministers' charging guidance,
- Ofwat's charging rules,
- Undertakers' charges and sustainable drainage.

6.16 The Bill amends the WIA to introduce codes and charging rules from Ofwat that are intended to increase the transparency and to streamline negotiations between undertakers, including for new appointees.

6.17 Clauses 8 – 11 and 16 – 17 contain powers for the Welsh Ministers to issue guidance as to the content of Ofwat's rules about various charges. The guidance is not subject to any Assembly procedure.

6.18 There is a power for Welsh Ministers to make regulations about the supply of water to a water undertaker by a person other than a water undertaker. The regulations will be subject to the **affirmative** procedure.

6.19 Finally this Chapter provides sewerage undertakers with the power to construct maintain and operate drainage systems for the purpose of reducing the volume of surface water entering public sewers, or the rate at which it does.

### **Chapter 3 Regulation of the Water Industry – Clauses 22 –26, 28, 31–34, 36–38 and Schedule 6**

6.20 This Chapter focuses on the regulation of the water industry, appeals of codes, adjudication functions and the charging powers of the Drinking Water Inspectorate.

6.21 There is a new primary duty on Welsh Ministers to secure the long term resilience of water supply and sewerage systems against environmental pressures, population growth and changes in consumer behaviour. There is also a new duty on Welsh Ministers to secure that undertakers do not show undue preference or undue discrimination in their dealings with other undertakers and licensees.

6.22 The Bill provides Welsh Ministers with a new power allowing for the production of a single consolidated statement of the Welsh Government’s strategic priorities and objectives for Ofwat to follow when carrying out its statutory function.

6.23 To support these reforms the Bill provides Ofwat with powers to regulate the water and sewerage market as competition develops.

6.24 There is provision for the Welsh Ministers to issue and revise high level guidance in relation to Ofwat’s charging rules made under the Bill. The guidance must be appropriately consulted on and laid before the Assembly for a period of 40 days, during which period the Assembly could resolve not to adopt the guidance.

6.25 There are measures to reduce the frequency with which undertakers are required to produce drought plans to a maximum five year cycle. Currently undertakers must review their drought plans not later than three years and six months after the publication date of the previous final drought

plan Welsh Ministers may also amend the planning timeframes for undertakers' water resources management plans by order (the current planning timeframe is 25 years). Any orders are subject to the **negative** procedure.

6.26 The Bill proposes a new power for the Welsh Ministers by order to specify alternative parties to perform some of Ofwat's adjudication responsibilities. The order will be subject to the negative procedure. There is also a new measure which would allow the Secretary of State to make regulations for appeals to the Competition and Markets Authority against a decision of Ofwat to revise a designated code or not to make a revision following consultation about a proposed revision.

6.27 Finally, there is also an amendment to the WIA to enable the Drinking Water Inspectorate to charge fees for the costs of its regulatory activities beyond 2017

#### **Chapter 4 Supplementary Clauses**

6.28 This chapter provides Ofwat with power for a limited time to make changes to undertakers' conditions of appointments and licensed water suppliers' licence conditions in order to implement the Bill's reforms. Alongside this there is a power for the Welsh Ministers to give direction to Ofwat on any proposed changes.

6.29 There is a further clause giving effect to Schedule 7 of the Bill, which covers the amendments that are consequential on the provision made by Part 1 of the Bill.

#### Part 2 – Water Resources – Clauses 41–43

6.30 This part of the Bill removes the ability of undertakers to claim compensation for losses resulting from modification and revocations of their abstraction licences in certain circumstances.

6.31 It amends the Water Resources Act 1991 (“WRA”) to transfer responsibility from the Welsh Ministers to the Natural Resources Wales

(NRBW) for maintaining the main river map for Wales, and to require the map to be kept in electronic form. There are also provisions concerning amendments to the maps, consultation on new maps, entitlements to free copies and guidance. The guidance is not subject to any Assembly procedure.

6.32 The main river map for Wales sets out which rivers in Wales have been designated as 'Main Rivers' for the purposes of flood risk management. In Wales, NRBW is responsible for carrying out functions on a main river. Internal Drainage Boards are responsible for all other watercourses within internal drainage districts, and the Lead Local Flood Authorities for those outside a drainage district.

6.33 On 12<sup>th</sup> November 2013 the Minister [announced](#) that he had decided to transfer the functions, assets and staff of Wales's three Internal Drainage Boards to NRBW from 2015.

6.34 The Bill repeals the part of the WRA which removes the duty on the NRBW to keep and maintain a public register of maps showing the pipes and waterworks it holds.

### Part 3 – Environmental Protection – Clauses 44 – 46 and Schedule 8

6.35 This part of the Bill focuses on the environmental permitting regime (*Pollution Prevention and Control Act 1999*) and the power to consolidate into that regime the requirements relating to water abstraction and impoundment licences, flood defence consents and fish passage approvals, all of which are currently administered by NRBW. It contains powers which enable a single set of regulations covering the existing pollution prevention and control permit requirements and new regulations for abstraction licences, flood defence consents and fish pass approvals. This single set of regulations will enable operators to apply for one rather than multiple permits.

6.36 Any regulations made by Welsh Ministers will normally be subject to the **negative** procedure unless the regulations are the first set made under the enabling provisions, create an offence or amend primary legislation. In

such circumstances, the regulations will be subject the **affirmative** procedure.

#### Part 4 – Flood Insurance

6.37 This part provides a placeholder (or holding) clause to address the availability and affordability of insurance for UK households at high risk of flooding. The clause will be re-visited during the passage of the Bill with the intention of enabling the UK Government to meet its commitment to secure new arrangements following the expiry of the current voluntary agreement (the Statement of Principles) between the UK Government and the insurance industry. The UK Government has confirmed that pending the commencement of any new scheme, the Statement of Principles will continue to apply even after its expiry.

6.38 The UK Government’s consultation on draft clauses to be included in the Bill ended on 20th September 2013.

6.39 As ‘insurance’ is an exception to the Assembly’s legislative competence, it is unclear whether the Welsh Government will lay a further Memorandum once the Bill is amended to include any detailed clauses.

6.40 The Committee may wish to clarify with the Minister the nature and extent of any discussions he has had with the UK Government over the draft clauses and whether a further Memorandum is anticipated.

#### Parts 5 & 6 – Miscellaneous, General and Final

6.41 The Memorandum does not seek consent for any provisions in these parts of the Bill.

### **7. Legislative Competence**

7.1 It is the view of the Welsh Government that the Bill’s provisions fall within the legislative competence of the Assembly in so far as they relate to:-

- fisheries – paragraph 1 of Part 1 Schedule 7 to GOWA,
- the promotion of business and competitiveness – paragraph 4 of Schedule 7 to GOWA,
- environmental protection and land drainage – paragraph 6 of Schedule 7 to GOWA,
- coastal protection, flood risk management, water supply, water quality, water resources management, licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales, regulation of undertakers whose areas are wholly or mainly in Wales.

## **8. Conclusion**

8.1 Whilst the Bill contains a mixture of devolved and non-devolved matters, Legal Services are satisfied that it makes relevant provision in relation to Wales for a purpose within the legislative competence of the Assembly. The Minister considers that the Bill represents the most practicable and proportionate legislative vehicle to enable the provisions to apply in relation to Wales, given that the water and sewerage industry is regulated on a ‘wholly or mainly’ basis.

8.2 The Committee may wish to consider the points raised in paragraphs 6.2, 6.11 and 6.40 of this note.

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