

LEGISLATIVE CONSENT MEMORANDUM

GROWTH AND INFRASTRUCTURE BILL – Deemed planning permission for generating consents

Legislative Consent Motion

1. 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.

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by John Griffiths AM, Minister for Environment and Sustainable Development, under Standing Order 29.6 of the Standing Orders (“SO”) of the National Assembly for Wales (the “National Assembly”). This Legislative Consent Memorandum is laid under SO 29.2. SO 29 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within the legislative competence of the National Assembly or has a negative impact on that competence.
3. The Growth and Infrastructure Bill (the “Bill”) was introduced in the House of Commons on 18 October 2012. The Bill can be found at:

<http://services.parliament.uk/bills/2012-13/growthandinfrastructure/documents.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government (“DCLG”). Many (but not all) of the Bill’s provisions amend the law in England only and either do not apply in Wales or restate the existing law in Wales.

5. The purpose of the Bill is to promote growth and to facilitate the provision or use of infrastructure, including provision amending the planning regime in England so that planning applications may be made to the Secretary of State rather than local planning authorities in certain circumstances; provision in relation to the electronic communications code under the Communications Act 2003; and provision in relation to the registration of town and village greens in England.
6. The Bill contains other infrastructure provisions, including provision amending the Electricity Act 1989 so that Ministers may vary consents granted under section 36 of that Act; and provision so that the Secretary of State may make directions in relation to any related deemed planning permissions when a section 36 or section 37 Electricity Act consent is varied.
7. The Bill also contains economic measures, including provision about the postponement of the date on which new non-domestic rating lists should be compiled; and provision amending the Employment Rights Act 1996 to create a new employment status of “employee-owner”.

Provisions in the Bill for which consent is sought

8. The relevant provision in the Bill is clause 18(1) to (4) (consents under Electricity Act 1989: deemed planning permission), as introduced to Parliament on 18 October 2012 and amended on 12 December. The tabled amendment can be accessed at the Parliamentary website at:

<http://services.parliament.uk/bills/2012-13/growthandinfrastructure/documents.html>

9. Section 36 of the Electricity Act 1989 provides the Secretary of State with power to grant consent for the construction, extension or operation of power stations. Section 37 of the same Act provides the Secretary of State with power to consent to the installation of certain overhead power lines.
10. Applications for development of onshore power stations (over 50MW) are now made under the Planning Act 2008 by way of development consent order. However, there are a number of existing section 36 consents as well as a small number of outstanding applications for consent under that section. It is also possible that future applications will be made to install overhead power lines pursuant to section 37 of the Electricity Act, to the extent these are not covered by development consent.
11. Clause 17 of the Bill amends section 36 of the Electricity Act 1989 so that the Secretary of State will have power to vary a consent granted under that section. It is often the case that a project is not developed for several years after consent is granted. This power is designed to accommodate technological advances and evolving industry practice

that occurs during that time. The Welsh Government does not consider this amendment is within legislative competence of the National Assembly. The Secretary of State already has power to vary section 37 consents.

12. Section 90 of the Town and Country Planning Act 1990 provides the Secretary of State with power to direct that planning permission be deemed to be granted when consent under section 36 or section 37 is granted. There is no power for the Secretary of State to vary a deemed planning permission when a section 36 or section 37 consent is varied. It is possible for local authorities, under section 73 of the Town and Country Planning Act 1990 (or the Welsh Ministers, on call-in, under section 77 of that Act) to vary the conditions (only) of a deemed planning permission.
13. **Clause 18** of 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.
14. It is the view of the Welsh Government that the purpose of clause 18 (1) to (4) is to amend the scope and operation of the town and country planning regime and that those provisions therefore fall within the National Assembly's legislative competence as set out in subject 18 (town and country planning) in Part 1 of Schedule 7 to the Government of Wales Act 2006.
15. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Advantages of utilising this Bill

16. 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.

17. 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.
18. 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.

Financial implications

19. There are no anticipated financial implications for the Welsh Government of any subsequent implementation of the relevant provisions of the Growth and Infrastructure Bill which cannot be absorbed as part of existing obligations.

John Griffiths AM
Minister for Environment and Sustainable Development
December 2012