

LEGISLATIVE CONSENT MEMORANDUM ENERGY BILL

Supplementary Legislative Consent Motion

1. “That the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that, in addition to the provisions referred to in motion NNDM4634, further provisions which have been brought forward in the Energy Bill relating to Carbon Capture and Storage 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 Sustainability, 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 Energy Bill (the Bill) was introduced on the 8th December 2010. The Bill can be found at: <http://services.parliament.uk/bills/2010-11/energyhl.html>

4. The Bill has already been the subject of a Legislative Consent Motion in the National Assembly, where the National Assembly gave its consent that provisions relating to the Coal Authority in Part 4 of the Bill should apply in Wales. The Memorandum that accompanied that Motion is attached at **Annex 1**.

Summary of the Bill and its Policy Objectives

5. The Bill is sponsored by the Department for Energy and Climate Change. The Bill has three principal objectives: tackling barriers to investment in energy efficiency; enhancing energy security; and enabling investment in low carbon energy supplies.

6. The Bill contains provisions to enable the financing of energy efficiency measures in homes and businesses (the “Green Deal”) and confers powers on the Secretary of State to make regulations requiring private landlords to make energy efficiency improvements to their domestic and commercial properties in England and Wales. The Bill also introduces new home-heating cost reduction targets for energy companies and improves access to energy performance data.

7. Other policy areas covered by the Bill include improved third party access to UK oil and gas infrastructure; a special administration regime for energy

suppliers; and new powers for the Coal Authority. The Bill also repeals the Home Energy Conservation Act 1995 in Wales.

Provisions for which the consent of the National Assembly is sought

8. Since the time of introduction of the Bill in December 2010, the UK Government has introduced a number of further provisions by way of Government amendments.

9. Two amendments were tabled by the UK Government on 1st June 2011 in relation to Carbon Capture and Storage (“CCS”). The purpose of CCS is to reduce carbon emissions to the atmosphere, as part of climate change policy, and to improve energy security. In this case, by capturing carbon dioxide and transporting it to for storage at depleted oil and gas fields and/or saline formations under the sea.

10. One of the amendments proposes new Clauses that provide the Secretary of State with discretion to remove his powers (under the Petroleum Act 1998) to make previous operators responsible for the decommissioning of offshore facilities that have been converted to CCS. The tabled amendment may be accessed on the Parliamentary website at:
<http://services.parliament.uk/bills/2010-11/energyhl.html>

11. It is the view of the Welsh Government that the provisions referred to in paragraph 10 fall within the National Assembly’s legislative competence as set out in Subject 6 (Environment) in Part 1 of Schedule 7 to the Government of Wales Act 2006.

12. The other CCS amendment tabled by the UK Government proposes new Clauses that will allow the Secretary of State to grant developers compulsory rights over land in which pipelines that are intended to be converted to convey carbon dioxide for CCS, are situated. The tabled amendment may be accessed on the Parliamentary website at:
<http://services.parliament.uk/bills/2010-11/energyhl.html>

13. It is the view of the Welsh Government that the provisions referred to in paragraph 12 fall within the National Assembly’s legislative competence as set out in Subject 6 (Environment) in Part 1 of Schedule 7 to the Government of Wales Act 2006 .

14. A summary of these amendments to the Bill are as follows:

a) Abandonment of infrastructure converted for CCS demonstration projects

15. Offshore oil and gas facilities may be converted for CCS. The operator of the CCS facility is responsible for decommissioning those facilities, but if that operator fails in that responsibility, the original oil and gas operator may be made responsible by the Secretary of State (section 34, Petroleum Act 1998). This acts as a disincentive to convert these facilities to CCS.

16. This amendment will give the Secretary of State discretion to remove his powers under the Petroleum Act 1998 to make previous operators responsible for the decommissioning of facilities that have been converted to CCS. Instead, in the event that the CCS operator defaults, the UK Government will be responsible to decommission the site.

17. The Welsh Government considers that this amendment falls within the National Assembly's legislative competence because:

- the purpose of this amendment, on balance, is to remove a disincentive to CCS;
- that purpose relates to environmental protection and/or the collection, management or disposal of waste; and
- there is a reasonable argument that carbon dioxide in the context of CCS does not fall within the "oil and gas" Schedule 7 exception.

b) Compulsory Purchase Order Powers for Change of use of Existing Pipelines

18. There is a disparity between the powers that are available to a developer in circumstances when they are constructing a new pipeline and those available when they intend to change the use of an existing pipeline. Currently, a developer needs to get voluntary agreement from all landowners along the length of the pipeline in order to change the use of a pipeline, whereas the developer can use Compulsory Purchase Orders if they intend to construct a new pipeline. Government intervention, by way of amendment to the Pipe-Lines Act 1962, is considered necessary to address this disparity so that CCS developers can use existing pipelines to convey carbon dioxide where it is desirable to do so.

19. The Welsh Government considers that this amendment falls within National Assembly's legislative competence because:

- the purpose of this amendment is to facilitate CCS;
- that purpose relates to environmental protection and/or the collection, management or disposal of waste; and
- there is a reasonable argument that carbon dioxide in the context of CCS does not fall within the "oil and gas" Schedule 7 exception.

20. 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

21. 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

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

John Griffiths AM
Welsh Minister for Environment and Sustainability
May 2011

ANNEX 1

LEGISLATIVE CONSENT MEMORANDUM

ENERGY BILL

Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions relating to the Coal Authority in Part 4 of the Energy Bill, as introduced into the House of Lords on 8th December 2010, 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 Jane Davidson AM, Minister for Environment, Sustainability and Housing, under Standing Order 26.4 of the Standing Orders (“SO”) of the National Assembly for Wales (the “National Assembly”). This Legislative Consent Memorandum is laid under SO26.2. SO26 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 Energy Bill (the “Bill”) was introduced into the House of Lords on the 8th December 2010. The Bill can be found at:

<http://services.parliament.uk/bills/2010-11/energyhl.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Energy and Climate Change. The Bill has three principal objectives: tackling barriers to investment in energy efficiency; enhancing energy security; and enabling investment in low carbon energy supplies.
5. The Bill contains provisions to enable the financing of energy efficiency measures in homes and businesses (the “Green Deal”) and confers powers on the Secretary of State to make regulations requiring private landlords to make energy efficiency improvements to their domestic and commercial properties in England and Wales. The Bill also introduces new home-heating cost reduction targets for energy companies and improves access to energy performance data.

6. Other policy areas covered by the Bill include improved third party access to UK oil and gas infrastructure; a special administration regime for energy suppliers; and new powers for the Coal Authority. The Bill also repeals the Home Energy Conservation Act 1995.

Provisions in the Bill for which consent is sought

7. Clause 100 of the Bill amends the Coal Industry Act 1994 to give the Coal Authority in England and Wales new powers to take such action as it considers appropriate with respect to subsidence arising otherwise than in connection with coal mining and for the purpose of preventing, or mitigating the effect of, the discharge of water other than from coal mines. Similar provision in respect of Scotland is added by a separate clause which is not considered further.
8. The intention is to enable the Coal Authority to use its established expertise to assist other public bodies and private landowners in dealing with water pollution and subsidence remediation outside the coal mining sphere.
9. The National Assembly has legislative competence in relation to:
 - (i) Matter 6.3 in Part 1 of Schedule 5 to the Government of Wales Act 2006 (“GoWA 2006”) to legislate in relation to “protecting or improving the environment in relation to pollution”; and
 - (ii) Matter 6.4 in Part 1 of Schedule 5 to GoWA 2006 to legislate in relation to “protecting or improving the environment in relation to nuisances”.
10. A “nuisance” is defined as “.....a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from[a] state of affairs that constitutes pollution” (Field 6, Schedule 5 to GoWA 2006). Applying this wide definition, the Assembly Government considers that many instances of subsidence will be a “nuisance” for the purposes of matter 6.4.
11. Furthermore, we consider that discharges of contaminated water (which is the principal mischief at which the second part of this provision is aimed) can be regarded as “pollution” for the purposes of matter 6.3, where that discharge may give rise to environmental harm.
12. It is the view of the Assembly Government, therefore, that, to the extent that this provision confers powers on the Coal Authority to take action with respect to subsidence that is a nuisance, or to prevent, or mitigate the effect of, the discharge of polluting water, it is within the National Assembly’s legislative competence under matter 6.3 and matter 6.4 and that the agreement of the National Assembly is required under SO 26. SO 26 prescribes that a Legislative Consent Motion and Memorandum needs to be tabled and laid, respectively, before the National Assembly,

if a UK Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the National Assembly.

Advantages of utilising this Bill

13. These new powers will supplement the Coal Authority's existing statutory functions and will enable the Authority to utilise its established expertise in subsidence management and contaminated water remediation in relation to non-coal mining matters.
14. It is the view of the Welsh Assembly 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, so that the application of the Authority's expertise may be extended at the earliest opportunity for the public benefit and in the interests of improving public safety.
15. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Financial Implications

16. There are no anticipated financial implications for the Welsh Assembly Government of any subsequent implementation of the relevant provisions of the UK Energy Bill which cannot be absorbed as part of existing obligations.

Jane Davidson AM
Welsh Minister for Environment, Sustainability and Housing
January 2011

LEGISLATIVE CONSENT MOTION

ENERGY BILL

“To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that the provisions relating to the Coal Authority in Part 4 of the Energy Bill, as introduced into the House of Lords on 8th December 2010, in so far as these provisions fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

This Legislative Consent Motion is tabled by Jane Davidson, Minister for Environment, Sustainability and Housing, under Standing Order 26.4 of the National Assembly for Wales’ Standing Orders.

Dated