

LEGISLATIVE CONSENT MEMORANDUM

ENTERPRISE AND REGULATORY REFORM BILL

Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Enterprise and Regulatory Reform Bill, as introduced into the House of commons on 23 May 2012 relating to amendments of the Water Industry Act 1991, 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 SO29.2. SO29 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 Enterprise and Regulatory Reform Bill (the “Bill”) was introduced into the House of Commons on the 23 May 2012. The Bill can be found at:

[Bill documents — Enterprise and Regulatory Reform Bill 2012-13 — UK Parliament](#)

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department of Business, Innovation and Skills (“BIS”) The main purpose of the Bill is to encourage long term growth and simplify regulation. The Bill aims to:

- overhaul the employment tribunal system, and transform the dispute resolution landscape;
- improve the effectiveness and efficiency of competition enforcement and the competitiveness of markets, by strengthening the regime and improving the speed and predictability for business;
- set the purposes of the UK Green Investment Bank and ensure its independence;
- strengthen the framework for setting directors’ pay by introducing binding votes;

- extend the Primary Authority scheme, reduce inspection burdens on business and strengthen the legal framework for sunset clauses on regulation;
- repeal unnecessary legislation, cutting the burden on business and citizens.

The Bill extends to Wales.

Provisions in the Bill for which consent is sought

5. The relevant provisions contained in the Bill are:

Schedule 14, paragraphs 8-10 – These make amendments to sections 19 and 22A(13) of the Water Industry Act 1991 to change the emphasis for enforcement authorities to consider proceeding under the Competition Act 1998 rather than using enforcement powers under the Water Industry Act 1991. Section 22A(13) currently states that an “enforcement authority” cannot impose a penalty if they are satisfied that it is more appropriate to proceed under the Competition Act 1998. An enforcement authority includes Ofwat, the Welsh Ministers and the Secretary of State.

The amendment will remove the reference to the Welsh Ministers and Secretary of State and emphasise that this is a role to be exercised by Ofwat, carried out before imposing a penalty. In practice there will not be much difference in how this will operate. It effectively makes what was previously an implied duty an express duty. It will not require Ofwat to give priority to the Competition Act 1998 enforcement, or in any way change the considerations it needs to take into account in deciding which tool (if any) to use, but ensures it does not give Competition Act 198 consideration as a last step in its internal considerations before taking enforcement action. BIS regards this as a nuanced reform.

The Welsh Ministers/Secretary of State do not exercise any powers under the Competition Act 1998 and there have not been any incidences where the Welsh Ministers or the Secretary of State have taken action under this power. Ofwat is the appropriate body to consider if there are any competition issues that arise when exercising regulatory functions across the Water Industry Act 1991. Generally speaking, these powers are used by the Welsh Ministers to secure good standards of performance in relation to Water Quality.

It is the view of the Welsh Government, therefore, that these provisions as they relate to how Ofwat exercises its regulatory duties across the Water Industry Act 1991, fall within the National Assembly’s legislative competence under Part 1 of Schedule 7 to the Government of Wales Act 2006 (“GOWA 2006”) in relation to the Water and Flood Defence subject in paragraph 19.

Schedule 17, Part 2, paragraph 4 – This provision will repeal section 2(3)(d)(iii) of the Water Industry Act 1991. Section 2(3)(d)(iii) currently prevents associate companies of English and Welsh incumbent water companies from trading in the area of the parent company. This is known as the in area trading ban.

The aim of this proposal is to make it more efficient and cost effective for large-multi site businesses, such as retail chains, to deal with a single water/sewerage supplier. The removal of this section will enable all water companies to compete on an equal footing for multi-site water supply contracts.

It is the view of the Welsh Government, therefore, that these provisions fall within the National Assembly's competence under Part 1 of Schedule 7 to GOWA 2006 in relation to the Water and Flood Defence subject in paragraph 19. This provision relates to the regulation of licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales. Furthermore, the provision also falls within the Economic Development subject in paragraph 4, in so far as this relates to the promotion of business and competitiveness.

Advantages of utilising this Bill

6. 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 relation to Wales and to ensure consistency in the regulation of the water industry across England and Wales, in line with the Welsh Government's future aspirations for the water industry.

Financial implications

7. There are no anticipated financial implications for the Welsh Government of any subsequent implementation of the relevant provisions of the Enterprise and Regulatory Reform Bill which cannot be absorbed as part of existing obligations.

John Griffiths AM
Minister for Environment and Sustainable Development
June 2012