

LEGISLATIVE CONSENT MEMORANDUM

PROTECTION OF FREEDOMS BILL – AMENDMENTS TO CLAUSES RELATING TO THE FREEDOM OF INFORMATION ACT REGARDING TRANSPARENCY

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 NDM4680, those further provisions which have been brought forward in the Protection of Freedoms Bill relating to freedom of information and data protection, 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 Carwyn Jones AM, First Minister for Wales, 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. 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.

3. The Protection of Freedoms Bill (the Bill) was introduced on the 11 February 2011. The Bill can be found at <http://services.parliament.uk/bills/2010-11/protectionoffreedoms/documents.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Home Office. The main purpose of the Bill is to restore the rights and freedoms of individuals. The UK Government’s aim is “to roll back the State, reducing the weight of government imposition on citizens that has increased in recent years through legislation and centralised programmes”.

The Bill includes provision in the following areas:

- DNA retention
- Protection of biometric information of children in schools and colleges
- Further regulation of closed circuit television/automatic number plate recognition systems
- Powers of entry
- Prohibiting wheel clamping
- Reform of the vetting and barring scheme and criminal records regime
- Non-disclosure of decriminalised convictions for consensual gay sex
- Freedom of information

- Right to data
- Office of the Information Commissioner
- Serious fraud trials

5. The Protection of Freedoms Bill has already been subject to a Legislative Consent Motion (NDM4680) in the National Assembly where the National Assembly gave its consent for the relevant provisions of the Bill in so far as they fall within the competence of the National Assembly, to be considered by Parliament.

Amendments to the Bill for which consent is sought

6. The Bill contains a Clause (number 100) which, if made law, will have the effect of amending the Freedom of Information Act 2000 (FOIA). In particular, this Clause will have the effect of requiring public authorities to proactively publish datasets in a reusable format when a dataset is requested by an applicant.

7. The UK Government laid amendments during the Report Stage in the House of Commons which have been accepted, concerning freedom of information. The amendments were to the charging provisions which would have had the unintended effect of eliminating the possibility of charging for any datasets requested from a public authority. The amendments seek to preserve existing statutory powers to charge and to provide a power to make new regulations to enable charging. These amendments would ensure that (1) all public authorities which have existing statutory powers (other than under the Re-use of Public Sector Information Regulations 2005 (RPSI)) may continue to use those powers to charge and that (2) all public authorities which do not have their own statutory powers but who may use the RPSI regulations to charge, or who charge under a non-statutory power (e.g. common law or prerogative powers) may continue to charge under the new regulations.

8. The detailed effects of the amendments are:

- New provisions in section 11 of the FOIA will allow for the charging of fees by public authorities for making datasets available for re-use. New subsection (3) provides that a public authority may charge a fee by virtue of regulations made under new section 11B and new subsection (4) preserves existing statutory powers for public authorities to charge a fee. New subsection (5) provides that where a public authority intends to charge a fee, it must give the applicant a "re-use fee notice", which states the amount of the fee which must be paid before the dataset is available for re-use. New subsection (6) provides that where the public authority has given the applicant a re-use notice, it is not required to make the dataset available for re-use until the fee is paid in accordance with the notice; and new subsection (7) provides that if a public authority is exercising any existing statutory power to charge, the authority may combine the re-use fee notice with any other notice in accordance with the relevant statutory power being exercised.
- New section 11B makes further provision about the charging of fees by public authorities for making datasets (containing relevant copyright works) available for re-use. Subsection (1) confers a power on the Secretary of State to make regulations (subject to the negative resolution procedure) about the charging of fees

in connection with making the datasets available for re-use in response to requests under the FOIA and publication schemes. Subsections (2) and (3) set out what the regulations may prescribe, such as when a fee may or may not be charged and how much that fee might be.

9. It is the view of the Welsh Government that the provisions referred to in paragraph 8 above fall within the National Assembly's legislative competence as set out in Paragraph 14 of Schedule 7 (Public Administration) to the Government of Wales Act 2006. Under Paragraph 14 the National Assembly has competence to legislate on "access to information held by open access public authorities." The bodies caught by the definition of "open access public authorities" are the Assembly, the Assembly Commission, the Welsh Government and authorities which are Welsh Public Authorities as defined by the Freedom of Information Act 2000.

Advantages of utilising this Bill

10. It is the Welsh Government's view that it is appropriate for these amendments to apply to Welsh public authorities in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity. The amendments are necessary in order to protect important funding streams for public authorities which had inadvertently been removed by the Bill. These amendments will not have the effect of introducing any new abilities to charge for datasets, but it is important to preserve some scope for charging in this area. This Bill provides a vehicle for preventing financial shortfalls arising for certain public authorities which depend on being able to charge for certain datasets they produce.

11. These amendments are important for delivering the desired policy outcome and, as there are presently no plans in place to introduce a Welsh Bill relating to access to information matters there are considerable advantages in using this Bill to implement the appropriate legislative framework concerning charging in the timescale required.

Financial Implications

12. There are no financial implications associated with giving consent to the amendments,

Carwyn Jones AM
First Minister
November 2011