

REVISED LEGISLATIVE CONSENT MEMORANDUM

RIVERS AUTHORITIES AND LAND DRAINAGE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Rivers Authorities and Land Drainage Bill (the “Bill”) was introduced in the House of Commons on 5 March 2018. The Bill can be found at:

[Bill documents — Rivers Authorities and Land Drainage Bill 2017-19 — UK Parliament](#)

3. This is a revised version of the Legislative Consent Memorandum which was laid before the Assembly on 15 March 2019. The previous assessment of the Bill was reconsidered following a change to the approaches taken by Welsh Government and the UK Government when considering whether provisions in UK Bills require the consent of the National Assembly. The previous Memorandum sought consent for Clause 2 and 4 of the Bill, but the revised version will now also seek consent for both Clause 3 and Clause 5. These provisions are outlined below.

Policy Objective(s)

4. The Bill contains two policy objectives. The first, which only relates to England, will provide the Secretary of State for the Department for Environment, Food and Rural Affairs (Defra) with powers to establish new bodies known as "Rivers Authorities". This does not require legislative consent.
5. The second, which will apply to Wales, is to address a current obstacle to the raising of the expenses of certain Internal Drainage Boards (IDBs) under the Land Drainage Act 1991.

Summary of the Bill

6. This Private Member’s Bill is sponsored by David Warburton and has the support of Defra.
7. The Bill makes provisions about Rivers Authorities in England and makes provision about the expenses of IDBs in England and Wales.

8. Income is raised via special levies and drainage rates to cover the expenditure of IDBs and Internal Drainage Districts (IDD). The split of that income is determined by the annual value of agricultural land (drainage rates) and non-agricultural land (special levies) using the valuation data from between 1989 and 1992 but adjusted for changes in use of land in each financial year.
9. Land values in an IDD are calculated in accordance with the provisions in s.37 (2)-(5) of the Land Drainage Act 1991 (“the 1991 Act”). Land is valued differently, depending on its type; “agricultural land” (known as “chargeable properties” in the legislation) and “non-agricultural land”.
10. Section 83 of the Environment (Wales) Act 2016 made amendments to the 1991 Act in relation to the valuation of non-agricultural land for the purposes of the calculation of drainage rates.
11. To make the calculation process workable, similar regulation making powers for the Welsh Ministers as provided for in section 83 in relation to non-agricultural land need to be made in relation to agricultural land.
12. It is necessary to revise and update the methodology of calculating the split of income between special levies and drainage rates and this Bill will do that.
13. The Bill also provides Secretary of State powers to establish new bodies known as “Rivers Authorities” in England.

Provisions in the Bill for which consent is required

14. Clause 2 – amends section 37 of the Land Drainage Act 1991 to enable the Secretary of State to make regulations providing for the value of ‘other land’ in an English Internal Drainage District (IDD) to be determined in accordance with the regulations (similar to those contained in section 83 of the Environment (Wales) Act (“the 2016 Act”). Clause 2 also makes consequential amendments to other provisions in the 1991 Act in light of these changes, as well as consequential amendments to section 83 of the 2016 Act. This provision inserts definitions which are used in relation to Clause 4.
15. Clause 3 – inserts three new provisions (sections 37A – C) in to the Land Drainage Act 1991 relating to permission for an officer of Her Majesty’s Revenue and Customs (HMRC) to disclose revenue and customs information to a ‘qualifying person’ (which include individuals and bodies, including IDBs) for certain purposes.

Section 37A – confers the power for HMRC to disclose revenue and customs information and for the qualifying person to retain and use the information for a qualifying purpose. It also sets out the definition of a ‘qualifying person’ and ‘qualifying purpose’. The term ‘qualifying person’

includes Natural Resources Wales and a person authorised to exercise any function on their behalf, and the Welsh Ministers. A 'qualifying purpose' is defined as allowing a qualifying person to carry out the functions under Chapters 1 and 2 of Part IV of the Land Drainage Act 1991 (which contains financial provisions), or section 75 of the Local Government Finance Act 1988, which covers the situation where a body has no power to levy a rate on a drainage board, or whose power to do so is modified.

Authority to make regulations to amend who is a qualifying person or what is a qualifying purpose is conferred on the Welsh Ministers.

Section 37B – sets out the particular circumstances under which onward disclosure of Revenue and Customs information is permitted, and when such information may be retained and used. New section 37B(4) makes it an offence to disclose Revenue and Customs information relating to a person whose identity is specified in the disclosure or can be deduced from it, and criminal sanctions for that offence are stipulated under new section 37B(6).

Section 37C – makes provision in respect of a disclosure of information as regards certain other legal issues and legislation, including obligations of confidence, data protection legislation, the Regulation of Investigatory Powers Act 2000 and the Freedom of Information Act 2000.

16. Clause 4 – provides the Welsh Ministers and the Secretary of State (in relation to Welsh IDBs and English IDBs respectively) with the power to make regulations containing alternative methodology for the calculation of 'agricultural land'. These regulations would be subject to the affirmative procedure in the National Assembly for Wales. This is similar to the regulation making power contained in section 37 with regards 'other land'. Clause 4 also contains consequential provisions.

17. Clause 5 – This clause contains power for the Secretary of State to make consequential amendments by way of regulations, and which may amend, repeal or revoke any enactment. Regulations which amend primary legislation must be made under the affirmative procedure. This extends to statutory instruments and primary legislation made by the National Assembly for Wales in relation to this Act.

18. Consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in accordance with section 108A of the Government of Wales Act 2006, as read in accordance with the UK government's Devolution Guidance, which provides any requirement for consent or consultation imposed under paragraphs 8, 10 or 11 of Schedule 7B to GoWA should be ignored when undertaking an analysis of legislative competence for the purpose of Legislative Consent Memoranda.

Reasons for making these provisions for Wales in the Rivers Authorities and Land Drainage Bill

19. Any legislative changes would require primary legislation, and taking these provisions forward in this UK Private Member's Bill provides an opportunity to remedy this issue in a consistent manner in England and Wales.

20. An amendment to the Land Drainage Act 1991 was introduced through section 83 of the Environment (Wales) Act 2016. However, those provisions only granted powers to Welsh Ministers to revise the methodology for non-agricultural land, not for agricultural land. We now need to address this issue for both non agricultural and agricultural land equally and this legislation provides the means by which to do this.

21. These changes are important as without them the IDB, which in Wales is NRW, is unable to collect the correct income.

Financial implications

22. There are no financial implications for the Welsh Government if the National Assembly for Wales consents to the provisions applying to Wales.

Conclusion

23. It is the view of the Welsh Government that it is appropriate to deal with the provisions in this UK Bill as it represents a practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales at the earliest opportunity.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
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