

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO. 5)**

ENTERPRISE BILL: APPRENTICESHIPS - INFORMATION SHARING

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 a purpose that falls within, or modifies, the legislative competence of the National Assembly.
2. The Enterprise Bill (the “Bill”) was introduced in the House of Lords on 16 September 2015. The Bill can be found at:

<http://services.parliament.uk/bills/2015-16/enterprise.html>

The current version of the Bill is the Bill which passed from the House of Lords to the House of Commons (HC Bill 112), and references below to Part and clause numbers are to this version of the Bill.

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Business, Innovation and Skills (“BIS”). The UK Government’s main stated policy objectives for the Bill are to:
 - Cement the UK’s position as the best place in Europe to start and grow a business, by cutting red tape and making it easier for small businesses to resolve disputes quickly and easily; and
 - Reward entrepreneurship, generate jobs and higher wages for all, and offer people opportunity at every stage of their lives.
4. The Bill is in nine parts:
 - Part 1 makes provision to establish a Small Business Commissioner;
 - Part 2 provides for an extension of the Business Impact Target to include regulators and supports a shift in the way regulation is delivered by regulators through the Growth Duty and Regulators’ Code;
 - Part 3 provides for the simplification of the Primary Authority Scheme;

- Part 4 makes provisions to introduce a target for the total number of apprentices working in public sector bodies and to prevent misuse of the 'Apprenticeship' term;
- Part 5 makes provisions to introduce a legal obligation for insurance claims to be paid within a reasonable timeframe;
- Part 6 provides for the Valuation Office Agency ("the VOA") to share non-domestic rates information about properties and ratepayers with local government and also reforms the non-domestic rates appeals system;
- Part 7 makes provisions updating the Industrial Development Act 1982;
- Part 8 makes provisions to cap exit payments for public sector workers; and
- Part 9 makes general provisions in relation to consequential amendments, transitional and saving provisions and commencement.

Provisions in the Bill for which consent is sought

- 5.1 Consent is sought for aspects of the amendment (NC3) to the Enterprise Bill which was tabled by the Rt. Hon Anna Soubry MP, the Minister for Small Business, Industry and Enterprise on 2nd February, and published on 3rd February.
- 5.2 This amendment would insert a new Part 1A into the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA 2009). The new Part 1A (sections 40A to 40D) creates data sharing powers between Her Majesty's Revenue and Customs (HMRC), the Secretary of State and the Devolved Administrations in the context of apprenticeship functions.
- 5.3 The new section 40A of ASCLA 2009 confers a function on HMRC allowing them to share information with the Secretary of State. New section 40B makes equivalent provision for data sharing between HMRC and Welsh authorities, Scottish authorities and Northern Irish authorities.
- 5.4 As it applies to Wales, new section 40B(1) allows HMRC to disclose information to Welsh authorities for the purpose of the authority's functions in relation to Welsh apprenticeships. Section 40B(2) allows Welsh authorities to disclose information to HMRC for the purpose of requesting HMRC to disclose information to them, or for any other purpose connected with the authority's functions in relation to Welsh apprenticeships.
- 5.5 Section 40B(3) defines "Welsh authority" and "Welsh apprenticeships" for the purpose of section 40B. Welsh authorities are the Welsh Ministers, persons providing services to the Welsh Ministers, and any body or other person that

is prescribed in regulations made by the Secretary of State. Welsh apprenticeships are defined by reference to existing statutory provisions relating to apprenticeships in Wales. Regulations made under section 40B would prescribe Welsh authorities or amend the definition of Welsh apprenticeships only for the purpose of the data sharing provisions in the new Part 1A of ASCLA 2009. This definition may be amended by regulations made by the Secretary of State.

- 5.6 The new section 40C makes provision for wrongful disclosure of any information received from HMRC. Recipients of information may not disclose it to another person without the consent of the HMRC Commissioners. The provisions in section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) will apply to any disclosure made without consent if the information relates to a person whose identity is specified in the disclosure or can be deduced from it.
- 5.7 New section 40D sets out interpretation provisions for Part 1A.
- 5.8 It is the view of the Welsh Government that the provisions in amendment NC3 that create powers for Welsh authorities to disclose information to HMRC and that create powers to make regulations related to such disclosures fall within the legislative competence of the National Assembly for Wales in so far as they relate to “Economic development and regeneration, including social development of communities, reclamation of derelict land and improvement of the environment” (paragraph 4 of Schedule 4 to the Government of Wales Act 2006) and “Education and training” (paragraph 5 of Schedule 7). These provisions apply in relation to Wales.

Whether it is appropriate for the relevant provisions to be made, and to be made by means of this Bill

- 6.1 The purpose of the amendment is to provide for data sharing gateways for the purpose of apprenticeships between HM Revenue and Customs and the Secretary of State and HM Revenue and Customs and the devolved administrations. The data sharing gateways are being introduced in light of the UK Government’s intention to bring forward provisions in their Finance Bill to create an Apprenticeship Levy on employers.
- 6.2 Although the Welsh Government have concerns around the Apprenticeship Levy the proposal to allow for sharing of data in relation to apprenticeships is positive, and will enable the Welsh Government to better understand the impact of the levy on employers in Wales.
- 6.3 It is the view of the Welsh Government that it is appropriate for this provision to be made. The powers will allow Welsh Ministers and other Welsh authorities, if prescribed, to share data, but they will not be under a duty to share information, and will therefore be able to consider the types of information which should be shared, and how they should be shared.

- 6.4 It is appropriate for the provision to be made in this UK Bill, because it relates to the setting up of a permissive UK wide data sharing system in relation to apprenticeships, and parts of that system are not within the legislative competence of the Assembly. The provision applies across Scotland, Northern Ireland and Wales (as well as England) and making the provision across the UK in a single UK Bill therefore enables the provisions to come into force across the UK at the same time allowing a coherent and consistent approach.

Financial implications

- 7.1 Depending on the approach Her Majesty's Revenue and Customs (HM Revenue and Customs (HMRC) take to data provision there may be a cost to Welsh Ministers and Welsh Authorities relating to data transfer. The likely costs have not been quantified but are limited to administrative costs only.

Julie James, AM
Deputy Minister for Skills and Technology
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