

LEGISLATIVE CONSENT MEMORANDUM

ENTERPRISE AND REGULATORY REFORM BILL – POWERS TO INCLUDE SUNSET AND REVIEW PROVISIONS IN SUBORDINATE LEGISLATION

Supplementary Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that those provisions of the Enterprise and Regulatory Reform Bill which relate to a power for Welsh Ministers to include sunset and review clauses in subordinate legislation, insofar as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

Background

2. The supplementary Legislative Consent Motion at paragraph 1 above has been tabled by Jane Hutt AM, Minister for Finance and Leader of the House, under Standing Order (“SO”) 29.6 of the Standing Orders 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 effect on that competence.

3. The Enterprise and Regulatory Reform Bill (the “Bill”) was introduced in 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 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.

5. The Bill extends to Wales.

Provisions in the Bill for which consent is sought

6. The relevant provisions are the sunset and review provisions in clause 49 of the Bill as introduced into Parliament (clause 50 of the Bill as amended in Public Bill Committee in the House of Commons, HC Bill 61).

7. This clause amends the Interpretation Act 1978.

8. The effect of this amendment is that where an Act of Parliament, or an Act or Measure of the Assembly, confers a subordinate-making power on anyone other than the Scottish Ministers, subordinate legislation made under the power *may* (it doesn't have to) include a sunset or review provision.

9. A sunset provision is a provision which makes the subordinate legislation expire at the end of a period to be specified in that subordinate legislation. A review provision is one which requires the maker of the subordinate legislation to review its effectiveness within time limits to be specified in that subordinate legislation.

10. Where the subordinate legislation is amending other subordinate legislation, the amending subordinate legislation may include a sunset or review provision in respect of the subordinate legislation to be amended.

11. If the Bill is passed, all the subordinate legislation-making powers and duties which the Welsh Ministers have under a UK Act of Parliament or an Assembly Measure or Act will then encompass the *power* to include a sunset or review provision within that subordinate legislation.

12. This will apply in respect of existing powers under UK Acts or Assembly Acts or Measures to make subordinate legislation, as well as those acquired by the Welsh Ministers from the passing of the Bill onwards. This is because reference to the new section 14A (which clause 50 of the Bill will insert into the Interpretation Act) is being added to paragraph 1 of Schedule 2 to the Interpretation Act 1978. That paragraph contains the list of provisions in the Interpretation Act which apply to UK Acts and Assembly Measures and Acts *whenever passed*.

Advantages of utilising this Bill rather than Assembly legislation

13. It would be possible for an Assembly Act to achieve a significant part of what the Bill provision is doing, by amending all the Welsh Ministers' subordinate legislation-making powers and duties which fall within Assembly

competence, so that those powers encompass the ability to include sunset and review provisions in the subordinate legislation made using those powers and duties.

14. However, in order for it to be absolutely clear to the users of legislation when the power to include a sunset or review provision applied, this would require legislative provision that is more cumbersome than the simple device of amending the Interpretation Act.

15. If an Assembly “Interpretation Act” contained a similar general provision to this one, it could only have effect in respect of subordinate legislation which fell within the Assembly’s competence. Therefore, legislation users would need to work out whether a particular piece of subordinate legislation was within the Assembly’s competence before they could tell whether a sunset or review clause could be included in it.

16. The only way to ensure that it was clear when a sunset or review clause could be included would be to list in an Assembly “Interpretation Act” all the subordinate legislation making powers which were covered. That would result in a very long piece of legislation which would require significant resources to draft and pass.

17. In addition, the Bill’s sunset and review provisions apply in respect of any Welsh Ministers’ subordinate legislation making powers which do not fall within Assembly competence. They are therefore more comprehensive in effect than the provisions which could be made in an Assembly Act.

18. As such, there are good reasons for utilising the Bill to make these provisions and to apply them to Welsh Ministers’ subordinate legislation making powers.

19. It is also worth noting that the relevant provisions are enabling provisions: they give the Welsh Ministers the power to include sunset and review provisions in subordinate legislation, but Welsh Ministers may decide not to exercise these powers. Further, any exercise by the Welsh Ministers of these powers would normally be subject to Assembly scrutiny, either through affirmative or negative procedures in the Assembly.

Financial implications

20. There are no anticipated financial implications for the Welsh Government following from the application of the sunset and review provisions in respect of Welsh Ministers’ subordinate legislation-making powers. Any financial implications of invoking sunset or review provisions in relation to particular proposals would be considered in each individual case.

Jane Hutt AM
Minister for Finance and Leader of the House
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