

Supplementary Legislative Consent Motion in relation to the Energy Bill

Legal Briefing

Cynulliad
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Wales



Context

1. This legal briefing has been prepared in relation to the Legislative Consent Motion (LCM) currently before the National Assembly. It is significant for two reasons. Firstly, it is amongst the first LCMs to come before the Assembly since it acquired its much broader legislative competence as a result of the referendum earlier this year. Secondly, it is amongst the first LCMs to which the new Standing Order 29 applies.
2. Legislative Consent Motions became a feature of Assembly business in the Third Assembly following the acquisition by the Assembly of limited legislative competence in relation to matters set out in Schedule 5 to the Government of Wales Act 2006. They followed the precedent set in Scotland since 1999 where they were commonly referred to as Sewell motions. They indicate the agreement of the Assembly to legislation being made at Westminster on subjects for which legislative competence has been devolved. During the Third Assembly they became gradually more frequent as the Assembly's legislative competence grew. Following the extension of that competence to include all 20 subjects set out in Schedule 7 to the 2006 Act, it is likely that they will become an important feature of life in the Fourth Assembly there is a much greater range of subjects on which the consent of the Assembly would be needed if the UK Parliament proposes to legislate on that subject in relation to Wales.
3. The new Standing Order 29 is based on Standing Order 26 of the Third Assembly, but contains one significant development in SOs 29.4 and 29.5, which provide that the Business Committee may refer a legislative consent memorandum to one or more committees for consideration and report (a legislative consent memorandum explains the background to the Bill and explains the basis for the LCM). As no committees (other than the Business Committee) have yet been established, it is not possible for this legislative consent memorandum to be given committee consideration. When LCMs are referred to committees, it is likely that legal advice such as this will be given to the committees, and may be incorporated in the committee reports. In

the absence of such committee consideration, this advice is being made available directly to all Members prior to the plenary debate.

The Energy Bill

4. The Energy Bill received its formal First Reading in the House of Lords on the 8th December 2010, and has since completed its passage through the Lords. It has now reached the Committee Stage in the House of Commons, which is scheduled to be completed by the 21st June 2011.

5. The Bill contains provisions relating to energy efficiency, security of energy supplies, low carbon generation and the Coal Authority. The Explanatory Notes for the Bill contain the following analysis of the Bill's territorial application –

“TERRITORIAL EXTENT AND APPLICATION

7. This Bill extends to England and Wales, Scotland and Northern Ireland, as described below.

8. All provisions of the Bill apply to Wales, except where they deal with Scotland separately from England and Wales (the separate Scottish provision relates to the Green Deal, the Private Rented Sector, the energy performance certificates register, and powers of the Coal Authority). All matters dealt with by the Bill are reserved in respect of Wales.

9. Only the provisions related to the continental shelf and nuclear funded decommissioning programmes extend to Northern Ireland. Both these matters are reserved in respect of Northern Ireland.

10. The Bill extends to Scotland, except where it amends legislation which does not itself extend to Scotland (see for example clause 102, which contains provisions on decommissioning nuclear sites), or where it deals with England and Wales separately from Scotland, as mentioned in paragraph 8.

11. Parts 2 and 3 relate to matters that are reserved in Scotland. In Part 1, aspects of the Green Deal (Chapter 1), Private Rented Sector (Chapter 2) and Energy Company Obligation (Chapter 4) may relate to devolved matters, as may clause 73 in Chapter 5 (access to register of energy performance certificates: Scotland) and the provisions about the Coal Authority's functions in Part 4. The repeal of the Home Energy Conservation Act (Part 5) is devolved to Scotland.

12. The Scottish Parliament's consent has been sought for the provisions in the Bill that trigger the Sewel Convention. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them. "

6. Whilst paragraphs 11 and 12 of the Explanatory Notes for the Bill explain the application of the Sewel Convention to the Energy Bill, paragraph 8 concludes with the statement that *"All matters dealt with by the Bill are reserved in respect of Wales."* Nevertheless, the National Assembly passed a Legislative Consent Motion on 25th January 2011 in relation to matters then included in the Bill and relevant to Wales that it considered came within the Assembly's legislative competence –

"To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions relating to the Coal Authority in Part 4 of the Energy Bill, as introduced into the House of Lords on 8th December 2010, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament."

7. This is an interesting example of the way different views may be expressed by the UK and Welsh Governments in relation to the need for LCMs at the National Assembly. Such matters will be of greater significance when an LCM is not passed by the Assembly.

8. Following the Referendum, the National Assembly has acquired much wider competence, which is not reflected in the current Explanatory Notes to the Bill (dated the 17th March). The UK Government has tabled a number of amendments to the Bill, including those referred to in the Legislative Consent Memorandum. Accordingly the Welsh Government proposes a further LCM in relation to two aspects of the Bill –the abandonment of infrastructure converted for carbon capture and storage (CCS), and compulsory purchase powers for change of use of existing pipelines.

The abandonment of infrastructure converted for carbon capture and storage (CCS)

9. Carbon Capture and Storage is considered by the UK government to be mitigation technology essential in tackling global climate change, and ensuring a secure energy supply. CCS technology captures carbon dioxide from fossil fuel power stations. The CO₂ is then transported via pipelines and stored safely offshore in deep underground structures such as depleted oil and gas reservoirs, and deep saline aquifers.

10. Up to £1bn of capital funding has been made available for the first CCS demonstration project. This is the largest public funding contribution in the world to a single CCS project. In November 2010, the UK Government announced that the selection process for the additional three demonstrations will be open to projects on gas-fired power stations as well as projects on coal-fired power stations. While there is a commitment to a further three demonstration projects, decisions await to be taken on the funding mechanism.

11. The first amendment that is the subject of the LCM is explained in paragraphs 15 and 16 of the LC Memorandum. Although the textual amendment will be to the Energy Act 2008, the amendment relates to Part IV of the Petroleum Act 1998 which deals with the Abandonment of Offshore Installations. The relevant powers under Part IV are vested in the Secretary of State, but a number of them are exercisable in relation to Wales only after consultation with Welsh Ministers.

12. The Welsh Government explains in paragraph 17 of the Memorandum that the amendment relates to environmental protection and/or the collection management or disposal of waste, both of which come within Subject 6 (Environment) of the Assembly's legislative competence. It could also have cited the Assembly's competence in relation to the protection of natural habitats, coast and marine environment (including seabed) which also come within Subject 6.

Compulsory purchase powers for change of use of existing pipelines

13. Section 12 of the Pipe-lines Act 1962 empowers the Secretary of State to grant a compulsory purchase order for pipe-line construction. The current amendment would extend that power by adding a new section 12A to that Act in relation to pipe-lines for conveying carbon dioxide and related works. None of the relevant powers have been transferred to Welsh Ministers.

14. The Welsh Government again explains (in paragraph 19 of the Memorandum) that the amendment relates to environmental protection and/or the collection management or disposal of waste, both of which come within Subject 6 (Environment) of the Assembly's legislative competence.

Conclusion

15. It is not clear whether the UK Government agrees that a Legislative Consent Motion is necessary in relation to these amendments. Nevertheless, the Memorandum accurately reflects the effect of the Motion.

Legal Services

National Assembly for Wales

June 2011