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## Constitutional and Legislative Affairs Committee

### DEREGULATION BILL

#### Legal Advice Note

#### Introduction

1. In July 2013, the UK Government published a draft Deregulation Bill. A Joint Committee of both Houses of Parliament conducted pre-legislative scrutiny of the draft Bill and the policies underpinning it. Evidence was submitted by the Constitutional and Legislative Affairs Committee that was highly critical of a proposal in clauses 51 and 57(2) of the draft Bill that UK Ministers should be able by order to repeal and revoke 'legislation no longer of practical value'. That criticism was endorsed in very strong terms by other witnesses to the Joint Committee on the Draft Deregulation Bill. That Committee in turn issued a very critical report and that specific proposal has now been left out of the Bill as introduced.

2. The Bill was formally introduced in the House of Commons on the 23<sup>rd</sup> January 2014 and received its Second Reading on the 3<sup>rd</sup> February. Committee scrutiny in the House of Commons concluded on the 25<sup>th</sup> March. Report Stage will follow It has been resolved that proceedings on the Bill will carry over to the next parliamentary session.

## **Background**

3. The foreword to the draft Bill described it as “the latest step in the Government’s on-going drive to remove unnecessary bureaucracy that costs British businesses millions, slows down public services like schools and hospitals, and hinders millions of individuals in their daily lives.” It describes the contents of Bill as reducing unnecessary burdens on three main groups:

- “Freeing business from red tape;
- “Making life easier for individuals and civil society; and
- “Reducing bureaucratic requirements on public bodies.”

4. The Bill at introduction consisted of 69 clauses and 17 Schedules. Most deal with the removal of requirements that relate to specific subjects, which relate to varying degrees to the different parts of the United Kingdom. As far as Wales is concerned, many relate to non-devolved subjects such as company law, insolvency and international shipping. Others affect legislation that applies only to England. More significant are those that affect the law of England and Wales on subjects such as housing and local government. However, in most cases those detailed provisions limit the effect of those changes to England, even if that is done by specifying that the existing law will in future only apply to Wales. Sometimes that is done by way of restatement.

## **The Legislative Consent Memorandum**

5. A Legislative Consent Memorandum (LCM) was laid by the Welsh Government on the 24<sup>th</sup> February in relation to the Bill as introduced. The LCM identified a series of matters within the legislative competence of the National Assembly in relation to which its consent will be sought.

6. Clause 3 and Schedule 1 make very minor changes to the law relating to apprenticeships in Wales under Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009.

7. Clause 24 and Schedule 8 amend the law in relation to road humps. Requirements to publish proposals will no longer be set out in the Highways Act 1980, but in regulations to be made by the ‘appropriate national authority’ (the Welsh Ministers in relation to Wales).

8. Clause 30 and Schedule 11 contain a number of provisions relating to animals, food and the environment. The objective of the change to the Destructive Imported Animals Act 1932 is to remove a requirement on occupiers of land to report sightings of grey squirrels because they have become so common. That requirement is contained in a 1937 Order, that could normally be revoked by relying on the same power that enabled it to be made. It is said that:

*22. Unfortunately, it is not possible to simply revoke or amend the 1937 Order in the usual way (i.e. by subsequent statutory instrument) because the enabling power in the 1932 Act (which is also the power under which the 1937 Order would be amended) requires that, in order to exercise the Order making power, the Welsh Ministers (for our purposes) must be satisfied that it is desirable to prohibit or control the keeping of grey squirrels and destroy any at large. Given that grey squirrels are now common in the UK, neither the Welsh Ministers nor the UK Government can be so satisfied and consequently, the power in the 1932 Act is no longer available in relation to that species.*

The logic of that argument is difficult to follow since it is easy to be satisfied that something is desirable, however difficult it may be to achieve that objective in practice. Nevertheless, the removal of a requirement to report sightings is clearly a reasonable objective for the Bill.

9. Subsequent Parts of Schedule 11 remove local authority functions in relation to air quality and noise abatement zones that are seen as superfluous.

10. Clause 35 and Schedule 12 relate to the abolition of the office of Chief Executive of Skills Funding in England and the transfer of functions to the Secretary of State. Amendments make minor consequential changes to a power to provide services in Wales only with the consent of the Welsh Ministers.

11. Clause 36 and Schedule 13 are intended to reduce burdens on local authority maintained further education institutions. As there are no such institutions in Wales, these changes will have no practical effect in Wales.

12. Clause 57 and Schedule 16 repeal duties relating to consultation or involvement. The majority relate to England only. Part 2 of Schedule 16 identifies two provisions that affect England and Wales. The first relates to the provision of sewers under the Water Industry Act 1991, and is not referred to in the LCM. It was the subject of a statement by the Minister for Natural Resources and Food on the 11<sup>th</sup> February 2014 that can be found here – <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=253655&ds=2/2014>

The second relates to the commencement of Business Improvement District arrangements, and is explained at length in the LCM. ‘

13. Clause 60 and Schedule 17 refer to legislation no longer of practical use. Although the order-making power included in the draft Bill is no longer included, the list of specific repeals remains. These are explained in detail in paragraphs 72–118 of the LCM—and whilst the inclusion of reference to competence in relation to ‘Economic development’ in some cases seems questionable, the provisions being repealed clearly do come within the Assembly’s competence. The Committee may be particularly interested in the obscure offences under the Town Police Clauses Act 1847 that are to be repealed. These include the flying of kites and beating of carpets!

### **Matters not referred to in the Legislative Consent Memorandum**

14. Clause 52 of the Bill repeals section 4(10) of the Care Standards Act 2000, which was added to section 4 of the 2000 Act by section 4 of the Children and Young Persons Act 2008. That provision has not been commenced in relation to Wales, but remains part of the 'Welsh Statute Book'. It is not referred to in the LCM and the Explanatory Memorandum to the Bill says that it is 'relevant only to England.' Nevertheless, the repeal of a provision that forms part of the law of Wales and is within the Assembly's competence in relation to Social Welfare should be part of the subject matter of a Legislative Consent Memorandum. It would be helpful if the Government were to explain why this provision has not been included in the LCM.

15. Provisions of a more general nature referred to in paragraphs 16–17 and 21 are also not included in the LCM. It may well be the case that these are the subject of ongoing discussions between the Welsh and UK Governments, but if they remain part of the Bill in anything like their current form, the Committee may consider that they will need to be the subject of a further LCM.

### **Power to spell out dates described in legislation**

16. Clause 58 contains a power for a Minister of the Crown by order to replace a reference in legislation to the commencement of a provision with a reference to the actual date. Provisions within the competence of the Scottish Parliament and Northern Irish Assembly are specifically excluded. There was no reference to Wales on introduction. There is no reference to this clause in the LCM although it will affect legislation within the Assembly's competence. Paragraph 269 of the

Explanatory Memorandum to the Bill states that “Devolution discussions with all of the devolved administrations are ongoing.”

17. On the 18<sup>th</sup> March, the Public Bill Committee agreed a government amendment that “an order under this section may not amend legislation made by the Welsh Ministers.” As legislation for the purposes of this power is defined as ‘an Act [of Parliament] or subordinate legislation’ the power would not in any case have applied to Assembly Acts or Measures. The power will nevertheless apply to Acts of Parliament within the legislative competence of the Assembly.

### **Exercise of regulatory functions**

18. Although not a matter that is itself within the Assembly’s legislative competence, as is explained below, these provisions are for a purpose within that competence, namely ‘economic development’, which is one of the subjects in Schedule 7 to the Government of Wales Act 2006. It therefore comes within the test contained in Standing Order 29.1 in the same way that the Green Investment Bank provisions of the Enterprise and Regulatory Reform Bill were considered by the Assembly because they were for purposes related to the environment.

19. Clause 61(1) of the present Bill provides that “A person exercising a regulatory function to which this section applies must, in the exercise of the function, have regard to the desirability of promoting economic growth.”

20. A Minister of the Crown would be able, by order, to specify the regulatory functions to which clause 61 would apply. Such an order could not specify a “regulatory function so far as exercisable in Wales, if or to the extent that the function relates to matters which are devolved Welsh matters.” A devolved Welsh matter means a matter within the legislative competence of the National Assembly. Thus it would not apply, for example, to regulation by the Welsh Language

Commissioner in relation to the Welsh language, but would apply to the regulation of broadcasting in Wales by Ofcom.

### **General provisions**

21. Clause 65(1) would empower a Secretary of State by order to make such provision as he or she considers appropriate in consequence of the Act. That may include transitional, transitory or saving provision and amend, repeal, revoke or otherwise modify legislative provisions, including those made by the National Assembly and devolved institutions in all parts of the United Kingdom. For example, if an Act of the Assembly referred to legislation to be repealed by the Bill, that reference could be deleted. In the usual way, amendments to primary legislation would be subject to the affirmative procedure at Westminster; changes to subordinate legislation would be subject to the negative procedure. The power to make such changes to Welsh legislation inevitably brings this power within the LCM process.

### **Postscript**

22. The final session of the Committee Stage in the House of Commons took place on Tuesday the 25<sup>th</sup> March. Amendments agreed include Government amendments in relation to:

- Agricultural holdings;
- Taxis and Private Hire Vehicles;
- Building in England;
- Safety helmets: exemption for Sikhs;
- TV licences.

23. A further legislative consent memorandum will be required for any of these amendments that come within the test contained in Standing Order 29.1.

**Legal Services**

**National Assembly for Wales**

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