

LEGISLATIVE CONSENT MEMORANDUM

LOCALISM BILL

Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions relating to local government pay accountability, the abolition of the duty to promote local democracy, the abolition of the petitions duty, the discharge of homelessness duties into the private rented sector and the Tenant Services Authority reform in Parts 1 and 6 of the Localism Bill (“the Bill”), as introduced into the House of Lords on 13th 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.”

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Carl Sargeant AM, Minister for Social Justice and Local Government, under Standing Order 26.4 of the Standing Orders (“SO”) of the National Assembly for Wales (the “National Assembly”). This Legislative Consent Memorandum is laid under SO 26.2. SO 26 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 impact on that competence.
3. The Localism Bill was introduced into the House of Lords on the 13th December 2010. The Bill can be found at:

<http://services.parliament.uk/bills/2010-11/localism.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government. It is the UK Government’s aim that the Bill is to devolve greater powers to councils and neighbourhoods, give local communities control over decision making, including through the use of financial incentives, and is a key piece of legislation that affects a wide range of existing housing, planning and local government legislation.
5. The Bill contains provisions to enable the empowerment of local people, the freeing of local government from central and regional control, provision of a share in local growth for local communities and a more efficient and local planning system.

Provisions in the Bill for which consent is sought

6. Clauses 21 to 26 of the Bill (**Local Government Pay Accountability**): These provisions aim to increase the transparency of local authority spending on staff in order to aid public understanding and lead to efficiency savings. The provisions require authorities to develop and publish an annual policy on senior officers pay. The senior officers to be covered by the provisions are those appointed upon joint negotiating committee (JNC) terms and conditions. The proposals will apply to principal councils and fire and rescue authorities in Wales.
7. The provisions within the Bill relating to senior officers' pay policy statements fall within the legislative competence of the National Assembly as provided for within Matter 12.5(a) of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") as they relate to "the making of arrangements by relevant Welsh authorities to secure improvement in the way in which they exercise their functions", namely the way in which they determine the terms and conditions of their senior members of staff.
8. Clauses 27 and 28 of the Bill (**Abolish the duty to Promote Local Democracy and Abolish Petitions Duty**): These provisions within the Bill repeal the duties placed on local authorities within the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) to provide facilities for making petitions, and to promote democracy. The relevant sections of the 2009 Act are yet to be commenced in Wales, and have only been brought into partial force in England.

The petitions sections of the 2009 Act require local authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions, and place duties upon them regarding the provision of facilities for the submission of electronic petitions. The intention was to make local decision-making in relation to petitions presented to principal local authorities more transparent, by requiring them to respond to petitions which meet certain criteria and making the responses to petitions publicly available.

The duty to promote democracy requires local authorities to promote understanding amongst the public of public bodies in their area, in terms of what these bodies do and their democratic arrangements and how the public can take part in those arrangements. These provisions are considered ineffective in both England and Wales.

9. The provisions in the Bill repealing the duties in relation to petitions and the promotion of democracy fall within the legislative competence of the National Assembly as provided for within Matter 12.5 (b) of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") which permits the National Assembly to legislate for the making of arrangements by authorities for the involvement in the exercise of their functions of people

who are likely to be affected by, or interested in, the exercise of their functions.

10. Clauses 124 and 125 of the Bill (**Homelessness – Discharge of homelessness duties into the private rented sector**): These clauses amend the Housing Act 1996 with regard to the discharge of homelessness duties to homeless persons by local authorities. Local authorities owe a range of duties to homeless people, and in cases where the household is in a priority need category and have not been responsible for making themselves homeless, the authority is obliged to find housing for them temporarily until they are rehoused. The rehousing duty is at present normally met by providing social housing, and although the duty can be met by providing private rented sector housing, this has to be with the consent of the applicant. The amendment will permit a discharge of the duty on a local authority by provision of private rented sector housing without the consent of the applicant (subject to certain safeguards).
11. The National Assembly has legislative competence in relation to Homelessness under Matter 11.8 of Part 1 to Schedule 5 of the Government of Wales Act 2006 ("GoWA 2006") to legislate in relation to Wales and this provision is within the legislative competence of the National Assembly".
12. Clause 150 of the Bill (**Transfer of functions from the Office for Tenants and Social Landlords (the Office) to the Homes and Communities Agency (HCA)**): Clause 150(2)(a)-(c) amends Part 1 of Schedule 16 to the Housing and Regeneration Act 2008 so as to abolish the Office (known as the Tenant Services Authority ("the TSA"). The 2008 Act is amended so as to create the Regulation Committee of the HCA and to transfer the functions of the Office to the HCA (ie functions concerning the regulation of providers of social housing registered in England). The clauses also contain some changes to the regulatory functions.
13. The National Assembly has legislative competence in relation to Matter(s) 11.2 (social housing providers) and 11.3 (social housing bodies) in Part 1 of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") to legislate in relation to Wales. There is no provision for Wales in the Bill relating to TSA reforms, however, because some English registered providers of social housing are landlords of dwellings situated in Wales, it is considered that these provisions are within legislative competence.
14. It is the view of the Assembly Government, therefore, that, to the extent that these provisions are within the National Assembly's legislative competence under Matter(s) 12.5a, 12.5b, 11.8, 11.2 and 11.3, the agreement of the National Assembly is required under SO 26. SO 26 prescribes that a Legislative Consent Motion and Memorandum needs to be tabled and laid, respectively, before the National Assembly, if a UK

Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the National Assembly.

Advantages of utilising this Bill

15. These new clauses will;
 - increase the transparency of local authority spending on staff in order to aid public understanding and lead to efficiency savings;
 - repeal provisions which impose duties upon local authorities in relation to the receiving and handling of petition and the promotion of democracy that are considered to be ineffective;
 - amend local authority duties towards homeless persons
 - transfer functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency.

16. It is the view of the Welsh Assembly Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales.

17. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Financial Implications

18. There are no anticipated financial implications for the Welsh Assembly Government of any subsequent implementation of the relevant provisions of the UK Localism Bill which cannot be absorbed as part of existing obligations.

Carl Sargeant AM
Welsh Minister for Social Justice and Local Government
February 2011

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This Legislative Consent Motion is tabled by Carl Sargeant, Minister for Social Justice and Local Government, under Standing Order 26.4 of the National Assembly for Wales’ Standing Orders.

Dated