

LEGISLATIVE CONSENT MEMORANDUM

ENERGY BILL

Legislative Consent Motion

1. To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Energy Bill relating to establishing emission performance standards to impose limits on the amount of carbon dioxide that a new fossil fuel power station (i.e. one powered by coal, oil or “natural” gas) can emit in any given year, 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 John Griffiths AM, Minister for Environment and Sustainable Development, under Standing Order 29.6 of the Standing Orders (“SO”) of the National Assembly for Wales (the “National Assembly”). This Legislative Consent Memorandum is laid under SO 29.2. SO29 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 Energy Bill (the “Bill”) was introduced into the House of Commons on the 29 November 2012. The Bill can be found at:
<http://services.parliament.uk/bills/2012-13/energy.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Energy and Climate Change (“DECC”). The main purpose of the Bill is to ensure that the UK has a secure and affordable energy supply. The Bill sets out the following aims and key provisions:

The Bill is in six parts:

- **Part 1: Electricity Market Reform.** Reforming the electricity market with the aim of ensuring that electricity demands continue to be met over the coming decades. This Part includes provisions on contracts for difference and investment contracts, the capacity market, liquidity and market access, institutional arrangements in relation to the delivery of these schemes, a transition to a certificate purchase scheme for

generation supported by the renewables obligation, and an emissions performance standard for new fossil-fuel plants.

- **Part 2: Nuclear Regulation.** Establishes the Office for Nuclear Regulation with powers and responsibilities to regulate the safety and security of the next generation of nuclear power plants, as well as to deal with the transport of radioactive materials, nuclear security and safeguards more generally.
- **Part 3: Government Pipe-line and Storage System (GPSS).** Measures to enable the sale of the GPSS including providing for the rights of the Secretary of State in relation to the GPSS, registration of those rights, compensation in respect of the creation of new rights or their exercise, and for transferral of ownership, as well as powers to dissolve the Oil and Pipelines Agency by order.
- **Part 4: Strategy and Policy Statement.** Measures applicable to the Authority and the Secretary of State to create regulatory certainty by seeking to ensure that Government and the regulator are aligned at a strategic level.
- **Part 5: Miscellaneous:**
 - **Consumer redress:** This clause and accompanying Schedule introduce a new enforcement power for the Authority to require energy companies which breach licence conditions or other relevant regulatory requirements to provide redress to consumers who suffer loss, damage or inconvenience as a result of the breach.
 - **Offshore transmission:** A measure to provide an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission during a commissioning period in certain circumstances.
 - **Nuclear decommissioning:** A measure to enable the Secretary of State to recover the costs incurred in considering various agreements and programmes relating to the decommissioning of nuclear installations and the disposal of hazardous waste.
- **Part 6: Final.** This Part includes provision authorising spending in relation to electricity market reform.

Provisions in the Bill for which consent is sought

5. The relevant provisions contained in the Bill are:

Clause 38: Duty not to exceed annual carbon dioxide emissions limit - This places a duty on operators of fossil fuel plant to not exceed an emissions limit of Carbon dioxide in any year. The Secretary of State may by regulations make provision about the interpretation of the duty imposed on the operators.

Clause 39: Suspension etc of emissions limit in exceptional circumstances - This section allows for the suspension of the stated emissions limit in exceptional circumstances which are defined within this section. Before giving a direction the Secretary of State must consult the Welsh Ministers.

Clause 40: Monitoring and enforcement, - This section imposes a duty on the Welsh Ministers to make arrangements for the monitoring, compliance and enforcement of the emissions limit duty. The provisions for Welsh Ministers within this section are the same as those for the Secretary of State, the Scottish Ministers, and the Northern Ireland Department of Environment.

Schedule 5: Emissions Limit Duty: Monitoring and Enforcement. This Schedule sets out the matters that may be contained within enforcement regulations in relation to emissions limit monitoring and enforcement.

The aim of these provisions are to standardise across the UK permitted Carbon Dioxide emissions level for energy generation and to ensure a common environmental UK standard so as to ensure compliance with Climate Change targets.

It is the view of the Welsh Government, therefore, that these provisions fall within the National Assembly's competence under Part 1 of Schedule 7 to GOWA 2006 in relation to the Environment subject in paragraph 6, in particular environmental protection which includes pollution.

Advantages of utilising this Bill

6. It is the view of the Welsh 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 relation to Wales and acknowledge the powers of the Welsh Ministers, whilst ensuring consistency in emissions relating to energy generation across the UK .
7. The EPS measures to be applied in Wales mirrors the agreement that DECC has reached with Scottish Ministers. Subject to the agreement of Welsh Ministers, this will provide full parity with Scottish Ministers and alignment with Northern Ireland which operates its own Electricity Market.

Financial implications

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

John Griffiths AM

Minister for Environment and Sustainable Development

December 2012