

LEGISLATIVE CONSENT MEMORANDUM

ENTERPRISE AND REGULATORY REFORM BILL: PROVISIONS TO REQUIRE SUPPLIERS OF GOODS AND SERVICES TO PROVIDE ELECTRONIC DATA TO CUSTOMERS

Supplementary Legislative Consent Motion

1. To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Enterprise and Regulatory Reform Bill relating to the requirement on the supplier of goods and services to provide customer data 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 supplementary Legislative Consent Motion at paragraph 1 above has been tabled by Edwina Hart AM, Minister for Business Enterprise Technology and Science, 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 Standing Order 29.2. Standing Order 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 impact on that competence.

3. The Enterprise and Regulatory Reform Bill (the “Bill”) was introduced into the House of Commons on the 23 May 2012. The Bill can be found at:

<http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform/documents.html>

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 in the Bill are contained in a new clause to be inserted after Clause 73 and relate to "Supply of customer data". The new provisions would give the Secretary of State power to make regulations requiring a "regulated person" to provide "customer data" to:

- a customer, at the customer's request; and
- to a person who is authorised by a customer to receive the data, at the customer's request or, if the regulations so provide, at the authorised person's request.

7. "Regulated person" means a person, who, in the course of a business:

- (a) supplies gas or electricity to any premises;
- (b) provides a mobile phone service;
- (c) provides financial services consisting of the provision of current account or credit card facilities; or
- (d) any other person who, in the course of a business, supplies or provides goods or services of a description specified in the regulations.

8. "Customer data" means information which:

- (a) is held in electronic form by or on behalf of the regulated person, and
- (b) relates to transactions between the regulated person and the customer.

9. The Secretary of State may make regulations to authorise the making of charges by a regulated person for complying with requests for customer data. Those regulations must provide that any such charge may not exceed the cost of complying with the request.

10. For the purposes of the new provisions, the Bill defines a "customer" as a person who has purchased, or received free of charge, goods or services supplied by the "regulated person", including in the course of business to business transactions. It is the power of the Secretary of State for BIS to

require provision of the business to business data that impacts on an area within the National Assembly's legislative competence.

11. It is the view of the Welsh Government, therefore, that these provisions fall within the National Assembly's legislative competence under Part 1 of Schedule 7 to the Government of Wales Act 2006 in relation to the subject of Economic Development in paragraph 4, specifically promotion of business and competitiveness.

12. Regulations may make provision for the enforcement of these provisions by the Information Commissioner or any other person specified in the regulations.

Policy context

12. The UK Government launched its Consumer empowerment strategy '*Better Choices Better Deals; Consumers Powering Growth*' in April 2011. The strategy aims to give consumers more power. A key project in the strategy is 'midata' which aims to give consumers more control and access to their personal data so they might secure better deals for themselves individually and collectively.

13. The UK Government published its '*midata 2012 review and consultation*' on 27 July 2012. The paper sets out the Government's proposal to create an order making power to enable the Government to require transaction data to be released in an electronic, machine readable format at the customer's request.

14. The UK Government stated, in its response to the consultation, that it will give micro-businesses the right to access their data in the same way as individual customers. It is not intending to impose the duty on Micro-businesses to supply information. This is consistent with the UK Government's general approach to regulation. However, its decision on whether to include micro businesses in any regulations enabled by the new Bill provisions will be taken following further consultation.

15. Micro business are defined by regulation as businesses with less than 10 employees and whose annual turnover and/or balance sheet total does not exceed €2m.

16. The provision of information to individuals and to micro businesses about their transactions enables them to utilise applications that use or analyse data to find better deals, make savings or find services better suited to their needs. This in turn helps create a more competitive market place for services.

17. The benefits extend not only to consumers themselves but also to the UK economy as the provisions should serve to help create more competitive and efficient businesses. This should leave them well placed to take advantage of a strong and growing market for data services both at home and abroad. This market is predicted to be worth multiple billions of pounds in the future and the aim is to place UK businesses at the forefront in this field.

Advantages of utilising this Bill

18. It is the view of the Welsh Government that it is appropriate to consider and approve these provisions in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable the provisions to apply in relation to Wales. It is also to ensure a consistent and equitable approach across the UK in the application of the provisions whilst having regard to the Welsh Government's competence in this area. This will ensure a level playing field for micro businesses in Wales with the rest of the UK. The provisions will enable qualifying businesses to request data about their electronic transactions from suppliers of goods and services.

Financial implications

19. There are no anticipated financial implications for the Welsh Government of any subsequent implementation of the relevant provisions of the Enterprise and Regulatory Reform Bill which cannot be absorbed as part of existing obligations.

Edwina Hart AM
Minister for Business, Enterprise, Technology and Science.
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