

# LEGISLATIVE CONSENT MEMORANDUM

## ENERGY 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 the Coal Authority in Part 4 of the Energy Bill, as introduced into the House of Lords on 8<sup>th</sup> 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 Jane Davidson AM, Minister for Environment, Sustainability and Housing, 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 SO26.2. SO26 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 Lords on the 8<sup>th</sup> December 2010. The Bill can be found at:

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

### Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Energy and Climate Change. The Bill has three principal objectives: tackling barriers to investment in energy efficiency; enhancing energy security; and enabling investment in low carbon energy supplies.
5. The Bill contains provisions to enable the financing of energy efficiency measures in homes and businesses (the “Green Deal”) and confers powers on the Secretary of State to make regulations requiring private landlords to make energy efficiency improvements to their domestic and commercial properties in England and Wales. The Bill also introduces new home-heating cost reduction targets for energy companies and improves access to energy performance data.
6. Other policy areas covered by the Bill include improved third party access to UK oil and gas infrastructure; a special administration regime

for energy suppliers; and new powers for the Coal Authority. The Bill also repeals the Home Energy Conservation Act 1995.

### **Provisions in the Bill for which consent is sought**

7. Clause 100 of the Bill amends the Coal Industry Act 1994 to give the Coal Authority in England and Wales new powers to take such action as it considers appropriate with respect to subsidence arising otherwise than in connection with coal mining and for the purpose of preventing, or mitigating the effect of, the discharge of water other than from coal mines. Similar provision in respect of Scotland is added by a separate clause which is not considered further.
8. The intention is to enable the Coal Authority to use its established expertise to assist other public bodies and private landowners in dealing with water pollution and subsidence remediation outside the coal mining sphere.
9. The National Assembly has legislative competence in relation to:
  - (i) Matter 6.3 in Part 1 of Schedule 5 to the Government of Wales Act 2006 (“GoWA 2006”) to legislate in relation to “protecting or improving the environment in relation to pollution”; and
  - (ii) Matter 6.4 in Part 1 of Schedule 5 to GoWA 2006 to legislate in relation to “protecting or improving the environment in relation to nuisances”.
10. A “nuisance” is defined as “.....a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from ...[a] state of affairs that constitutes pollution” (Field 6, Schedule 5 to GoWA 2006). Applying this wide definition, the Assembly Government considers that many instances of subsidence will be a “nuisance” for the purposes of matter 6.4.
11. Furthermore, we consider that discharges of contaminated water (which is the principal mischief at which the second part of this provision is aimed) can be regarded as “pollution” for the purposes of matter 6.3, where that discharge may give rise to environmental harm.
12. It is the view of the Assembly Government, therefore, that, to the extent that this provision confers powers on the Coal Authority to take action with respect to subsidence that is a nuisance, or to prevent, or mitigate the effect of, the discharge of polluting water, it is within the National Assembly’s legislative competence under matter 6.3 and matter 6.4 and that 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**

13. These new powers will supplement the Coal Authority's existing statutory functions and will enable the Authority to utilise its established expertise in subsidence management and contaminated water remediation in relation to non-coal mining matters.
14. 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, so that the application of the Authority's expertise may be extended at the earliest opportunity for the public benefit and in the interests of improving public safety.
15. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

### **Financial Implications**

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

**Jane Davidson AM**  
**Welsh Minister for Environment, Sustainability and Housing**  
**January 2011**

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This Legislative Consent Motion is tabled by Jane Davidson, Minister for Environment, Sustainability and Housing, under Standing Order 26.4 of the National Assembly for Wales’ Standing Orders.

Dated