

LEGISLATIVE CONSENT MEMORANDUM

**LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND
CONSTRUCTION BILL**

Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions of the Local Democracy, Economic Development and Construction Bill relating to petitions to local authorities, 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 Dr Brian Gibbons 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 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 that falls within the legislative competence of the National Assembly.

3. The Local Democracy, Economic Development and Construction Bill (the Bill) was introduced on the 4 December 2008. The Bill can be found at:

<http://services.parliament.uk/bills/2008-09/localdemocracyeconomicdevelopmentandconstruction.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government. The main purpose of the Bill is to promote local democracy and economic development, to devolve greater power to local government and communities and to ensure fairness in construction contracts.

5. The Bill includes a small number of provisions for Wales that apply equally to England - a duty on local authorities to promote democracy and to establish a petitions scheme; a power for the Auditor General for Wales to appoint an auditor to certain entities connected with Welsh local authorities

and to issue a public interest report about those entities if appropriate; and, provision that will improve cash flow and rights to adjudication in construction contracts.

6. The Bill also proposes to enhance the legislative competence of the National Assembly so that it can pass an Assembly Measure in respect of governance and scrutiny arrangements in Welsh local government by inserting Matters in the Field of local government in Schedule 5 to the Government of Wales Act 2006 (GOWA 2006).

Provisions in the Bill for which consent is sought

7. Chapter 2 of the Bill makes provision for petitions to local authorities. It will place duties on local authorities in relation to petitions, including a duty to establish a petitions scheme. In particular:

- Clause 11 requires authorities to make, publicise and comply with a scheme for handling paper and electronic petitions made to the authority.
- Clause 12 makes provision as to what counts as a valid petition.
- Clause 13 requires petitions schemes to acknowledge valid petitions.
- Clause 14 requires authorities to take steps in response to "active" valid petitions on relevant matters, which are matters which relate to the authority's functions. In relation to Wales, the Welsh Ministers may by order specify matters which are not to be regarded as relating to a function of the authority. Such steps, set out in clause 14(6) might include, for example, holding a public meeting, holding an inquiry. There are further provisions, including allowing a petition organiser to ask an overview and scrutiny committee to review the authority's response to the petition.
- Clause 19(1) enables the Welsh Ministers to set out in an order what petitions schemes must or must not contain. Clause 19(6) permits the Welsh Ministers to direct an authority to revise its petitions scheme.
- Clause 20(1) enables the Welsh Ministers by order to apply the petitions duties to a wider category of local authority.

8. It should however be noted that the Bill contains a separate power for Welsh Ministers to commence the provisions to enable the Assembly Government to first consult on the duty.

9. The National Assembly has legislative competence in relation to Matter 12.5(b)¹ in Part 1 of Schedule 5 to GOWA 2006 to make *"provision for and in connection with the making of arrangements by relevant Welsh 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 the functions"*.

¹ As inserted by the Local Government and Public Involvement in Health Act 2007

10. It is the view of the Assembly Government that making provision for a scheme setting out the steps that local authorities must make in response to petitions about local authorities functions falls within the National Assembly's legislative competence under matter 12.5(b) and therefore the agreement of the National Assembly is required under SO 26. SO 26 prescribes that a Legislative Consent Motion and Memorandum need 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

11. The main provisions in the Bill relating to petitions could be dealt with in an Assembly Measure made under matter 12.5(b) of Schedule 5 to GOWA 2006. However, in this instance, it is the view of the Assembly Government that it is appropriate to deal with these provisions in this UK Bill, which has presented an opportunity for the Assembly Government to consider citizen calls of action in the form of petitions that will give our citizens a democratic right to raise an issue with a local authority, and to have that issued considered and responded to.

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

Financial Implications

13. The financial implications of any subsequent consultation, legislation or guidance arising from a future decision to exercise the power to place a duty on local authorities to establish a petitions scheme will be subject to full consideration of affordability within the SJLG MEG and DRC budget, and to a Regulatory Impact Appraisal which would include a cost benefit analysis.

Dr Brian Gibbons AM
Welsh Minister for Social Justice and Local Government
January 2009