

LEGISLATIVE CONSENT MEMORANDUM

PUBLIC BODIES BILL

Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that the provisions of the Public Bodies Bill, as introduced into the House of Lords on 28 October 2010, which relate to certain public bodies and offices, to the extent that these bodies and office holders exercise functions in Wales which would be 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 the First Minister 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 Public Bodies Bill (the “Bill”) was introduced into the House of Lords on the 28 October 2010. The Bill can be found at:

<http://www.publications.parliament.uk/pa/ld201011/ldbills/025/11025.i-ii.html>

Summary of the Bill and its policy objectives

4. The purpose behind the Bill is to ensure greater accountability, transparency and efficiency in Government by reducing the number and cost of public bodies (quangos). Clauses 1 to 6 of the Bill as introduced provide order-making powers for Ministers of the Crown in respect of the bodies listed in Schedules 1 to 6 to the Bill. These various powers can be summarised as follows:
 - Clause 1 provides power for a Minister of the Crown by order to abolish a body or office listed in Schedule 1;
 - Clause 2 provides power for a Minister of the Crown by order to merge any of the bodies or offices listed in Schedule 2;
 - Clause 3 provides power for a Minister of the Crown by order to modify the constitutional arrangements of a body or office listed in Schedule 3;

- Clause 4 provides power for a Minister of the Crown by order to modify the funding arrangements of a body or office specified in Schedule 4;
 - Clause 5 provides power for a Minister of the Crown by order to modify the functions of a body or office-holder listed in Schedule 5, or to transfer the functions of such a body or office-holder to an eligible person (which includes the Welsh Ministers);
 - Clause 6 provides power for a Minister of the Crown by order to authorise a body or office-holder listed in Schedule 6 to delegate some or all of its functions to an eligible person (which includes the Welsh Ministers);
 - Clause 23 provides power for a Minister of the Crown in connection with an order under clauses 1 to 6 to make a scheme to transfer property, rights and liabilities. Where a scheme is made by a Minister of the Crown, property, rights and liabilities must be transferred to an eligible person (which includes the Welsh Ministers) or to a body corporate unless constitutional or funding arrangements are being modified under clauses 3 or 4, in which case the transfer must be to a Minister of the Crown.
5. The Bill provides in clause 13 power for the Welsh Ministers by order to modify and transfer functions of the Countryside Council for Wales and, so far as relating to Wales, the Environment Agency and the Forestry Commissioners. The Bill will also be amended to enable the functions of Welsh Regional Flood and Coastal Committees to be similarly modified or transferred. This clause also provides power to establish a new body to receive and exercise such functions. This will enable appropriate restructuring of the delivery of environment related functions within Wales to ensure a more integrated approach, in line with the principles set out in *A Living Wales*, the Assembly Government's Natural Environment Framework. It also provides power for the transfer of devolved functions relating to the environment from the Welsh Ministers and public bodies performing functions in Wales.
 6. The Bill at clause 9 includes provision requiring the consent of the Welsh Ministers, where an order made under clauses 1 to 6 would have the effect of modifying certain functions of the Welsh Ministers, the First Minister or the Counsel General.

Provisions in the Bill for which Consent is sought

7. The Bill is an enabling one, which means that any substantive provision affecting the public bodies which are listed in Schedules 1 to 6 will be made by orders which are brought forward under the Bill and not by the Bill itself and therefore until such time as proposals are received it will not be possible to identify the extent to which those proposals might fall

within the legislative competence of the National Assembly. However, the order-making powers are capable of being exercised in relation to bodies which exercise devolved functions in Wales in respect of which legislative competence within Schedule 5 to the Government of Wales Act 2006 may be engaged.

8. Orders under the Bill may contain provision which could otherwise be made by Measure or which would have the potential, in the event of the abolition of certain bodies listed in Schedule 1, to have a negative effect on that competence. This could extend to competence under Fields 6 (environment), 10 (highways and transport), 11 (housing), 12 (local government), 16 (sport and recreation) and 18 (planning).
9. The UK Government has agreed to bring forward amendments to the Bill to provide that an order under clauses 1 to 6 will require the consent of the National Assembly to make provision which would be within the legislative competence of the National Assembly if that provision were contained in a Measure or Act of the National Assembly.
10. The UK Government has also agreed to bring forward amendments in relation to bodies exercising devolved functions which are constituted in Wales, or for areas mainly within Wales, where there are equivalent bodies existing in England or for areas mainly in England. These amendments will confer order-making powers on the Welsh Ministers comparable to those order-making powers under clauses 1 to 6 which are currently conferred on Ministers of the Crown. This will enable the Welsh Ministers to implement agreed policy, particularly in the area of flood and water management.
11. These amendments will include power to modify the constitutional arrangements and functions of Internal Drainage Boards for areas wholly or mainly in Wales and power to modify the funding arrangements of the Welsh drinking water inspectorate. It will also confer powers to modify the constitutional arrangements and functions of National Park authorities in Wales and enable them to enter into agency arrangements with other bodies.

Advantages of utilising this Bill

12. It is the view of the Welsh Assembly Government that it is appropriate to deal with the powers which will enable certain environment related functions of specified bodies to be transferred to other bodies, and a new body to be established to receive and undertake environmental delivery functions within Wales in the Bill. This is because the Bill represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales. This will enable the Assembly Government to pursue a more integrated approach to the delivery of environmental policies as outlined in *A Living Wales* and to respond to the outcome of that consultation.

13. The Bill provides powers for Ministers of the Crown to bring forward orders relating to the public bodies which are listed in Schedules 1 to 6 to the Bill. The requirement for the National Assembly's consent to any provisions in an order under clauses 1 to 6 which would fall within the Assembly's legislative competence means that there will be a full opportunity for the Assembly to consider the implications of any such proposals.
14. The order-making powers in the Public Bodies Bill are designed to enable UK Ministers to take forward the proposals announced on 14 October 2010 for the reform of a substantial number of public bodies for which the UK Government is responsible. However, any changes relating to bodies or offices with devolved Welsh functions, established in or for regions in Wales will be decided within Wales, given order-making powers will be conferred on the Welsh Ministers.

Financial Implications

15. We do not anticipate that any new costs will fall on the Welsh Assembly Government or public bodies in Wales as a direct result of the provisions in clauses 1 to 6 of the Bill itself. Orders which are brought forward by UK Ministers under the Bill may have financial implications for the Welsh Assembly Government and public bodies in Wales – both in terms of costs and savings – but it is not possible to quantify any such costs and savings unless and until specific proposals are brought forward.
16. Where costs arise as a result of proposals brought forward by UK Ministers, the Treasury's Statement of Funding Policy will apply (HM Treasury, October 2010). It provides (at paragraph 8 of section 3.2) that:

“where decisions taken by any of the devolved administrations or bodies under their jurisdiction have financial implications for departments or agencies of the United Kingdom Government or, alternatively, decisions of United Kingdom departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such costs, the body whose decision leads to the additional cost will meet that cost.”
17. The Welsh Assembly Government therefore expects that where a specific proposal is brought forward by the UK Government for changes to public bodies, a discussion would take place about any additional costs that might fall on the Welsh Assembly Government as a result of the proposal; and that these costs would be met by the UK Government. Savings could also result from such changes to public bodies. It is possible that on occasion there could be differences of view about the scale of costs or potential savings and how they are

dealt with or attributed. Any such issues would be dealt with on a case by case basis.

[Rt Hon] Carwyn Jones AM
First Minister of Wales