

LEGISLATIVE CONSENT MEMORANDUM

INTELLECTUAL PROPERTY BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO 29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Intellectual Property Bill (the “Bill”) was introduced in the House of Lords on 9 May 2013. The Bill can be found at:
<http://services.parliament.uk/bills/2013-14/intellectualproperty.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Business, Innovation and Skills. The UK Government’s policy objectives for the Bill are to modernise certain aspects of the law relating to intellectual property (“IP”), in order to ensure that the IP system operates more efficiently, is clearer and more accessible, thus increasing legal certainty.
4. The main elements of the Bill are:
 - Implementing the Unified Patent Court, part of which will be based in London. This would introduce a single patent system in almost all EU countries making it possible for British businesses to protect their inventions across countries in a single application. Any disputed applications would be held in the UK.
 - Making it easier for business to understand what is protected under design law, in order to aid innovation and make investment in the design sector safer and clearer
 - Making design ownership clearer to encourage trade in design intangible assets and reduce costs for business.
 - Strengthening design protection through the introduction of criminal penalties for UK registered designs, helping designers enforce their rights
 - Introducing a design rights opinion service with the aim of enabling more IP disputes to be settled without resorting to expensive and time-consuming litigation.
 - Allowing the UK to share information on unpublished patent applications to help clear existing application backlogs and speed up

clearance times. This would help speed up work between the UK and other patent offices.

Provision in the Bill for which consent is sought

Clause 19: Freedom of Information: exemption for research

5. Clause 19 of the Bill will, if made law, have the effect of amending the Freedom of Information Act 2000 (FOIA). It inserts a new exemption in section 22A of FOIA which will enable public authorities to withhold information in response to a request, where it relates to a continuing programme of research that is intended for future publication. A similar exemption already exists for public authorities subject to the Freedom of Information (Scotland) Act. The introduction of this exemption was recommended by the Justice Committee following their post legislative review of FOIA. The exemption will bring parity to public authorities across the UK and provide additional clarity and reassurance, both to Higher Education institutions and non-public sector research partners.
6. In order for this exemption to apply, public authorities will need to show that disclosing the information would, or would be likely to prejudice either the programme of research; the interests of the participants; the public authority holding the information, or any other person that would in time publish the research. The exemption is also subject to the public interest test so it can only be relied on if the public interest in withholding the information outweighs the public interest in disclosure.
7. The exemption also provides that public authorities are not required to confirm or deny that information is held if, or to the extent that this would, or would be likely to, prejudice any of the matters mentioned in the exemption. This is consistent with other FOIA exemptions.
8. The provision will apply to all public authorities who are subject to FOIA. This includes Welsh Public Authorities.
9. The provision does not include powers for Welsh Ministers to make subordinate legislation.
10. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales under Part 1 of Schedule 7 to the Government of Wales Act 2006 in relation to paragraph 14 (Access to information held by open access public authorities). An Act of the Assembly could make an amendment to FOIA by introducing a similar exemption for pre-publication research which would apply to "open access public authorities". The bodies caught by this definition are the Assembly, the Assembly Commission, the Welsh Government and authorities which are Welsh Public Authorities as defined by FOIA.

Advantages of utilising this Bill rather than Assembly legislation

11. 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. By utilising the Bill open access public authorities will be able to benefit from the new exemption at the same time as the exemption is introduced in England and Northern Ireland.

Financial implications

12. There are no anticipated financial implications for the Welsh Government.

Carwyn Jones AM
First Minister
May 2013