

LEGISLATIVE CONSENT MEMORANDUM

Public Services (Social Enterprise and Social Value) Bill

Legislative Consent Motion

To propose that the National Assembly for Wales, in accordance with Standing Order 29.6 agrees that provisions relating to the improvement of economic, social and environmental well-being through public contracts in the Public Services (Social Enterprise and Social Value) Bill, as introduced in the House of Commons on 30 June 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

1. The above Motion was tabled by Jane Hutt, Welsh Minister for Finance and Leader of the House under Standing Order 29.6 of the Standing Orders (“SO”) of the National Assembly for Wales (“NAW”). This memorandum is laid under SO29.2. SO 29 prescribes that a Legislative Consent Motion must be tabled and a Legislative Consent Memorandum laid before the NAW if a UK Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the NAW, or has a negative impact on that competence.

2. The Public Services (Social Enterprise and Social Value) Bill (“the Bill”) was introduced on the 30 June 2010 and can be found at:

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

3. This is a Private Members Bill and passed Committee stage in its House of introduction on 19th October 2011.

Summary of the Bill and its Policy Objectives

3. The main purpose of the Bill (as amended) is to create specific provision to require contracting authorities (ie those subject to the EU procurement regime by virtue of the Public Contracts Regulations 2006), when letting contracts, to consider (a) how what is proposed to be procured might improve the economic, social and environmental well being of their area and (b) how, in conducting the process of procurement, they might act with a view to securing that improvement.

This provision will not apply to the Welsh Ministers, the First Minister and the Counsel General; the National Assembly for Wales Commission; or “a relevant authority whose functions are wholly or mainly Welsh devolved functions”.

The term “a relevant authority whose functions are wholly or mainly Welsh devolved functions” includes the following organisations in Wales who accordingly will be excepted from the contracting requirements of the Bill -

- local authorities;
- fire and rescue authorities;
- National Park authorities;
- local health boards and trusts;
- governing bodies of community, foundation or voluntary schools; governing bodies of institutions in the further and higher education sectors; and
- bodies in Wales such as the Auditor General for Wales, the Countryside Council for Wales, various Commissioners.

However provisions identified in the Bill will continue to apply to police authorities and organisations which do not operate wholly or mainly in Wales.

Provisions in the Bill for which consent is sought

4. The Bill therefore makes provision that applies to bodies whose functions being wholly or mainly devolved in so far as they relate to Wales, are within the National Assembly for Wales’ competence, but which operate on a much broader front than in Wales. They include: the Environment Agency, the Forestry Commission, the UK Commission for Education and Skills and the Food Standard Agency.

5. Functions of the bodies mentioned in paragraph 4 are within the legislative competence of the NAW under the following headings:

Para 1 - Schedule 7 of the Government of Wales Act 2006 - Forestry;

Para 5 - Schedule 7 of the Government of Wales Act 2006 - Education;

Para 6 - Schedule 7 of the Government of Wales Act 2006 - Environmental Protection;

Para 8 - Schedule 7 of the Government of Wales Act 2006 - Food and food products.

Advantages of utilising this Bill

6. It is the view of the Welsh Government that the Bill (as amended) takes the most appropriate drafting approach in specifying which bodies are excluded from the relevant provisions even though it means that the Bill does, to a limited extent, deal with matters within the Assembly’s competence. The alternative would be to take a “functions” based approach which would require contracting authorities exercising functions in relation to Wales to consider whether each of their functions are within or without the scope of the duty. The provisions of the Bill will not have a significant policy impact on devolved functions.

Financial Implications

7. There are no financial implications associated with this Bill.

Jane Hutt AM.
Minister for Finance and Leader of the House