

Report on the Legislative Consent Memorandum for the Enterprise Bill

1.0 The Bill

1.1 The Bill was introduced in the House of Lords on 16 September 2015 and given its first reading on this date. A second reading of the Bill took place on 12 October 2015 and the Bill's consideration at Committee stage was scheduled to begin on 26 October.

1.2 The UK Government's main stated policy objectives for the Bill are to:

- Cement the UK's position as the best place in Europe to start and grow a business, by cutting red tape and making it easier for small businesses to resolve disputes quickly and easily; and
- Reward entrepreneurship, generate jobs and higher wages for all, and offer people opportunity at every stage of their lives.

1.3 The background to the Bill can be found in paragraph 1 of the Explanatory Notes to the Bill. The relevant paragraphs in the Explanatory Notes that relate to this LCM and connected provisions of the Bill are 58 – 107 (The Small Business Commissioner) and paragraphs 239-241 (Non-Domestic Rating).

2.0 Provisions in the bill for which consent is sought fall into two separate LCMs (but are considered collectively here).

2.1 The provisions in the Bill for which consent is sought:

- **LCM: Non-domestic rating provisions ('the LCM')**

Part 6 Disclosure of HMRC information in connection with Non-Domestic Rating Clause 22

- **Supplementary LCM (Memorandum No 2) Small Business Commissioner provisions ('the Supplementary LCM - No 2')**

Part 1 The Small Business Commissioner Clauses 1-12

Both the LCM and the Supplementary LCM No 2 are dealt with separately below:



3.0 The LCM

Part 6 of the Bill– Non-Domestic Rating

3.1 Business ratepayers currently have to provide information on their property and their business to both the Valuation Office Agency (who are responsible for business rates valuations) and local government. Currently, Valuation Office Agency staff are prohibited from sharing more information about the ratepayer with local government, which creates a barrier between ratepayers and local government.

3.2 The UK Government aims in relation to this issue are to:

- reduce the administrative burden in the business rates system and apply the ‘UK Government’s’ “tell us once” policy to the business tax; and
- make sure ratepayers no longer have to give largely the same information to local government as they do to the Valuation Office Agency.

3.3 Part 6 clause 22 relates to the Disclosure of Her Majesty’s Revenue and Customs (“HMRC”) information in connection with non-domestic rating. These provisions extend to England and Wales only.

3.4 The Bill amends the Local Government Finance Act 1988 inserting a new section 63A to enable officers of the Valuation Office of HMRC (VOA) to supply information to billing authorities, major precepting authorities and contractors and service providers working for them in relation to authorities’ non-domestic ratings functions. It also allows information to be supplied to the Secretary of State and the Welsh Ministers for functions relating to the central rating list¹.

3.5 Under Clause 22 regulations must be made in relation to Wales by the Welsh Ministers to prescribe a purpose for the sharing of NDR information or to prescribe a person to whom such information may be disclosed. These Regulations are to be made by the Affirmative procedure and further, may only be made with the prior consent of the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”).

3.6 Clause 22 also inserts a new section 63B to the Local Government Finance Act 1988 which makes provision for the lawful onward disclosure of the information and further, creates a criminal offence in relation to the unlawful disclosure of information which identifies an individual or whose identity can be deduced from the information provided under section 63A.

¹ The central rating lists contain the rating assessments of the network property of major transport, utility and telecommunications undertakings and cross-country pipelines

3.7 Clause 23 of the Bill deals with the alteration of non-domestic rating lists by further amending the Local Government Finance Act 1988 and applies to England only.

4.0 The Supplementary LCM No 2

Part 1 of the Bill – The Small Business Commissioner

4.1 Clause 1 will establish a Small Business Commissioner in the UK whose principal functions are:

- to provide general advice and information to small businesses;
- to consider complaints from small businesses relating to payment disputes with larger businesses; and make recommendations.

4.2 Clause 2 provides the definition of ‘small businesses’ for the purposes of this Bill and provides the Secretary of State with the power to vary the definition.

4.3 Clause 3 provides the Small Business Commissioner with the power to publish, or provide small businesses with impartial, general advice and information which the Commissioner believes may be useful to small businesses in connection with their supply relationships with larger businesses. This advice and information may include principles of contract law, rights or obligations in relation to the supply of goods or services as well as provide information about other persons, such as ombudsmen, complaint-handling bodies and regulators who may be able to assist in the resolution of disputes.

4.4 Clause 4 provides that the Small Business Commissioner must establish a complaints scheme under which the Commissioner will enquire into, consider and determine “relevant complaints”. These are complaints that are made by small businesses relating to the supply and payment relationship between a small business and a larger business.

Subsection (5) of clause 4 sets out the exclusions from the complaints scheme. These exclusions include that the Commissioner will not consider complaints about:

- how appropriate a price is for goods or services;
- matters which are going through legal or adjudication proceedings;
- matters which are within the remit of an ombudsman, regulator or adjudicator providing statutory adjudication, or another public body that considers complaints.

4.5 Clause 5 sets the parameters for the Commissioner’s enquiry into, the consideration and determination of complaints. Determinations made under the Scheme are not legally binding.

4.6 Clause 6 provides that the Commissioner may publish a report of the enquiry into the complaint after giving the complainant and respondent an opportunity to make representations in relation to its publication.

4.7 Clause 7 sets out the matters that must be considered by the Secretary of State when making the Scheme regulations including the Commissioner's duties for the consideration and determination of complaints.

4.8 Clause 8 sets out rules of confidentiality and the circumstances under which information can be disclosed.

4.9 Clause 9 relates to the requirement for the Commissioner to publish an annual report. Part of this process will involve a summary of the most significant matters raised by small businesses and recommendations by the Commissioner as to how they might be addressed. The Secretary of State is required to lay a copy of the annual report before Parliament.

4.10 Clause 10 states that the Secretary of State must review the Commissioner's performance, in particular, how effective the Commissioner has been in carrying out his or her functions, assessing the impact on improving commercial transactions and the awareness of small businesses of dispute resolution procedures.

4.11 Clause 11 provides the Secretary of State with the power to abolish the Commissioner and Clause 12 contains the definitions section of the terms used in Part 1 and Schedule 1.

4.12 These provisions under Part 1 of the Bill extend to all parts of the UK.

4.13 Para 16 of the LCM Supplementary No 2 outlines the Welsh Government's view on why they consider the LCM to be a proportionate legislative vehicle to enable these provisions to apply in relation to Wales:

"a) The Commissioner's functions are viewed as different but complementary functions to those carried out by the Welsh Government's interactions with and advice to business.

b) Applying these provisions in Wales could ensure parity of treatment for Wales relative to the rest of the UK. This is preferable in order to deal with any cross border issues, for example, where a small business is based in Wales but the large business is based elsewhere in the UK. A pan-UK approach is considered beneficial in this respect."

4.14 The provisions outlined above do not include powers for Welsh Ministers to make subordinate legislation. These powers are conferred on the Secretary of State only and will largely be dealt with by the affirmative resolution procedure in Parliament, save for regulations to specify the start date for the purposes of one exclusion under the complaints scheme, which is not subject to Parliamentary procedure.

5.0 Legislative Competence

5.1 The provision to which Clause 22 (Non-Domestic Rating), and the LCM refers, relate to a matter within the National Assembly's legislative competence under Subject 12 '*local government*' of Schedule 7 of the Government of Wales Act 2006 and specifically '*local government finance*' and '*powers and duties of local authorities*'.

5.2 As the Supplementary LCM No 2 explains, the provisions to which Clauses 1-12 (The Small Business Commissioner) under Part 1 of the Bill, relate to a matter within the National Assembly's legislative competence under Subject 4 '*Economic development*' of Schedule 7 to the Government of Wales Act 2006 and specifically '*the promotion of business and competitiveness*'.

5.3 The legislative consent of the Assembly is therefore, required in accordance with Standing Order 29.6 for both LCMs and also from the perspective of the UK Government in accordance with the revised Devolution Guidance Note 9.

6.0 Conclusion

6.1 We considered the Legislative Consent Memorandum on the Enterprise Bill at our meeting on 5 November 2015. We are content with the Memorandum.

Policy and Legislation Committee Service

November 2015