Enterprise Bill: Small Business Commissioner provisions

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 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 Enterprise Bill (the “Bill”) was introduced in the House of Lords on 16th September 2015. The Bill can be found at:

   http://services.parliament.uk/bills/2015-16/enterprise.html

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Business, Innovation and Skills (“BIS”). 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.

4. The Bill is in nine parts:

   • Part 1 makes provision to establish a Small Business Commissioner;

   • Part 2 provides for an extension of the Business Impact Target to include regulators and supports a shift in the way regulation is delivered by regulators through the Growth Duty and Regulators’ Code;

   • Part 3 provides for the simplification of the Primary Authority Scheme;

   • Part 4 makes provisions to introduce a target for the total number of apprentices working in public sector bodies and to prevent misuse of the ‘Apprenticeship’ term;

   • Part 5 makes provisions to introduce a legal obligation for insurance claims to be paid within a reasonable timeframe;
Part 6 provides for the Valuation Office Agency ("the VOA") to share non-domestic rates information about properties and ratepayers with local government and also reforms the non-domestic rates appeals system;

Part 7 makes provisions updating the Industrial Development Act 1982;

Part 8 makes provisions to cap exit payments for public sector workers; and

Part 9 makes general provisions in relation to consequential amendments, transitional and saving provisions and commencement.

Provisions in the Bill for which consent is sought

5. The provision for which consent is sought is:-

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<td>Part 1 – Small Business Commissioner</td>
<td>Clauses 1 to 12</td>
<td>Creation of a Small Business Commissioner, to empower small businesses to resolve disputes with larger businesses and avoid future issues.</td>
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6. The provision extends to England, Wales, Scotland and Northern Ireland.

Enterprise Bill Clauses 1 - 12

7. 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. Clause 2 defines what a small business is for the purposes of this Bill and provides the Secretary of State with the power to vary the definition.

8. Clause 3 provides the Small Business Commissioner with the power to provide general advice and information 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. The Small Business Commissioner is required to be impartial and will be required to work with others if third parties publish or provide that information.
9. Clauses 4 to 8 provide that the Small Business Commissioner must establish a complaints scheme (clause 4) 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 (clause 4). The outcome of the complaints process is not legally binding (clause 5), and 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. Clause 7 sets out the matters that must be considered by the Secretary of State when making the regulations. Clause 7 includes the Commissioner’s duties for the consideration and determination of complaints. Clause 8 sets out rules of confidentiality and the circumstances under which information can be disclosed.

10. 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. 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.

11. Clause 11 provides the Secretary of State with the power to abolish the Commissioner and clause 12 contains the definitions section.

12. The provisions outlined above do not include powers for Welsh Ministers to make subordinate legislation.

13. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to the “promotion of business and competitiveness”, a subject devolved to the Assembly by virtue of paragraph 4 of Part 1, Schedule 7 to the Government of Wales Act 2006.

14. Given the overall purpose of the Small Business Commissioner to support small business (and having regard to policy objectives for the Bill), it can be said to relate to the promotion of business and competitiveness and viewed that the National Assembly for Wales could make similar provision in relation to small businesses in Wales.

15. This view is consistent with our approach in respect of the Small Business, Enterprise and Employment Act 2015 in that a requirement for businesses to publish information about payment practices and policies related to the promotion of business and competitiveness which necessitated an LCM.

**Advantages of utilising this Bill rather than Assembly legislation**
16. 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 practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales because:-

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.

Financial implications

17. We understand that as the UK Government is implementing these proposals to set up the Commissioner and its office, there will be no cost implications for Wales to agreeing these proposals.

Mrs Edwina Hart MBE CStJ AM
Minister for Economy, Science and Transport
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