

REVISED SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.2)

Small Business, Enterprise and Employment Bill: Amendment in relation to Landlord and Tenant Act 1954

This Memorandum is a revision of the Memorandum laid on 7 November (LCM-LD9980) (the previous Memorandum"). It differs from the previous Memorandum as it has been revised to take account of amendments to the Small, Business, Enterprise and Employment Bill ("the Bill") tabled on Saturday 20 December by the Parliamentary Under Secretary of State for Business, Innovation and Skills and Minister for Intellectual Property, Baroness Neville-Rolfe. The amendments relate to Clauses 35, 152, 153 and 157.

These amendments are within the National Assembly's legislative competence and relate to the Landlord and Tenant Act 1954 and home business tenancies.

In accordance with Standing Order 29.3 (v) this revised Memorandum sets out how and why the new Memorandum differs from the previous one.

Revisions have been made to paragraph 9, and new paragraphs 11a, b and c added for the purpose of explaining the amendments to the Bill that have occurred since the laying of the previous Memorandum.

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 Small Business, Enterprise and Employment Bill (the "Bill") was introduced in the House of Commons on 25 June 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Business, Innovation and Skills ("BIS"). The main policy objectives of BIS for the Bill are to open up new opportunities for small businesses to compete, get finance to create jobs, grow, innovate and export.
4. The Bill makes provision about:
 - improved access to finance for businesses and individuals;

- regulatory provisions relating to business and certain voluntary and community bodies;
- the exercise of procurement functions by certain public authorities;
- the creation of a Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses with their tied pub tenants;
- the regulation of the provision of childcare and provision about information relating to the evaluation of education;
- the regulation of companies;
- company filing requirements;
- disqualification from appointments relating to companies; and provision about insolvency;
- the law relating to employment; and for connected purposes.

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought to amendments tabled by Matthew Hancock MP and Jo Swinson MP to the Small Business Enterprise and Employment Bill on 28 October. The amendments 209, 210, 211, 212, 213, 214 and 215 relate to the addition of new clause NC11 in the Bill to exclude home business tenancies from Part 2 of the Landlord and Tenant Act 1954.

6. The amendments to the Small Business Enterprise and Employment Bill have been tabled with the aim of assisting home businesses and are designed to encourage residential landlords to permit business use in their tenancy agreements. The amendments provide for and relate to a new clause which amends the Landlord and Tenant Act 1954 so its provisions for security of tenure of business tenancies do not apply to tenancies of dwellings granted to individuals for occupation as homes when tenants, with their landlord's permission, carry on business of a kind which might reasonably be carried on at home. Landlords will be free to choose what sort of activities to permit, but the amendment is intended to remove the current incentive to bar all forms of business activity.

7. The amendment defines a "home business" as "a business of a kind which might reasonably be carried on at home". However, a business is not to be treated as a home business if it involves the supply of alcohol for consumption on licensed premises which form all or part of the dwelling-house.

8. The amendments apply in relation to Wales.

9. The new clause NC11 provides a power for the Welsh Ministers to make regulations to prescribe cases in which businesses are, or are not, to be treated as home businesses. The regulations are to be made by statutory instrument. The statutory instrument may not be made however until a draft of the statutory

instrument containing the regulations has been laid before, and approved by a resolution of the National Assembly for Wales (i.e. affirmative procedure).

10. The amendments also provide for a number of revisions to clauses numbered 143, 144 and 148 of the Bill on 28th October in consequence of the new clause NC11. The amendments numbered 209 to 212 to clause 143 of the Bill include a power for the Welsh Ministers to make consequential provisions relating to new clause NC11 as it applies in Wales. Where such consequential amendments amend or repeal an Act, or a Measure or Act of the National Assembly for Wales, the regulations will be subject to the affirmative procedure, otherwise they will be subject to the negative procedure.

11. The amendment numbered 213 to clause 144 of the Bill allows the Welsh Ministers to make transitional, transitory and saving provision in relation to the commencement of new clause NC11, and limits the equivalent power conferred on Ministers of the Crown so it does not overlap with the power given to the Welsh Ministers. The amendments numbered 214 and 215 to clause 148 of the Bill include providing the Welsh Ministers with the power to bring new clause NC11 into force in relation to Wales. Regulations which make transitional, transitory or savings provision in connection with the coming into force of the new clause NC11, or which commence the new clause NC11, are not subject to Assembly procedure.

11a. Further amendments were tabled ‘After Clause 35’ to the Bill on 20 December which insert the following new Clause called “Section 35: supplemental and consequential provision” these relate to tenancies held on trust. These provisions amend section 41 of the 1954 Act to ensure that where a home business is carried on by a person who occupies the home as a beneficiary under a trust, the same principles apply and any such tenancy will not be afforded the security of tenure that applies to business tenancies under Part 2 of the 1954 Act.

11b. The new clause 35: Supplemental and consequential provision, also includes technical provision to ensure consistency in the application of the provisions relating to home business tenancies.

11c. Further amendments were tabled to the Bill on 20 December at Clauses 152, 153 and 157 to ensure that the Welsh Ministers can also make consequential provision in relation to the new clause described in paragraphs 11a, and b described above, and commence the new clause in relation to Wales.

12. It is the view of the Welsh Government these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to “housing” (under subject 11 of Part 1 of Schedule 7 to GOWA), and in relation to the “promotion of business and competitiveness” (under subject 4 “Economic Development” in Part 1 of Schedule 7).

Advantages of utilising this Bill rather than Assembly legislation

13. It is the view of the Welsh Government it is appropriate to consider and approve these provisions in this UK Bill as it represents the most appropriate and

proportionate legislative vehicle to enable the provisions to apply in relation to Wales.

14. Micro businesses, of which Wales has a proportionally greater number than England, are of significant and growing importance to the Welsh economy. The amendments to the UK Bill will ensure those businesses have the potential to benefit from these provisions at the same time as those in England. The provisions will also ensure a possible obstacle to forming new and successful businesses will be removed in Wales at the same time as in England.

Financial implications

15. The amendments are designed to encourage and foster the growth of micro businesses and should, therefore, lead to greater economic and social benefits to the local and national economies. There is a minor risk to the Welsh Government in consenting to these amendments as they could potentially erode some of the tax base if they resulted in more home businesses being liable for non-domestic rates. This is because liability under Non Domestic Rates is generally lower than Council Tax, and this has the potential to impact on funding available to Local Government. However, in general terms, a ratepayer should not have to pay Non-Domestic rates for minor use of the home as its primary use will still be domestic and therefore Council Tax will continue to be payable. Additionally the amendment relates only to tenanted property so the number of properties which could be affected is limited. As a result, it is considered this amendment will have no significant impact on funding available to Local Government.

**Lesley Griffiths AM
Minister for Communities and Tackling Poverty
January 2015**