

Environment and Sustainability Committee

Report on the Enterprise and Regulatory Reform Bill -
Legislative Consent Memorandum (Water industry)

Introduction

On 19 July 2012, the Environment and Sustainability Committee considered a legislative consent memorandum that relates to provisions in the UK Enterprise and Regulatory Reform Bill that seek to amend the Water Industry Act 1991.

It agreed to report to the National Assembly for Wales that **it has no objection to the use of this legislative consent motion, as proposed by the Welsh Government.**

The remainder of this report sets out the background to this decision.

Links to all of the documents referred to in this report are provided in the final section: 'Sources and additional information'.

Context

The UK Government's Enterprise and Regulatory Reform Bill ('the Bill') is currently being considered by the UK Parliament.

Sections of this Bill seek to legislate in areas of competence devolved to the National Assembly for Wales. Convention requires that the National Assembly for Wales ('the Assembly') considers consenting to this. The Assembly does this through considering a legislative consent motion tabled by the Welsh Government.

The legislative consent motion is drafted as follows:

"To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Enterprise and Regulatory Reform Bill, as introduced into the House of commons on 23 May 2012 relating to amendments of the Water Industry Act 1991, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament."

The Welsh Government published a legislative consent memorandum ('the memorandum') on 12 June 2012 that explains this in more detail.

Principally, the memorandum sets out that the provisions in the Bill for which consent is sought are contained within:

- Schedule 14, paragraphs 8-10; and
- Schedule 17, Part 2, paragraph 4.

These elements of the Bill seek to amend the Water Industry Act 1991 (sections 2.19 and 22A).

Policy intent

Paragraph five of the memorandum sets out the policy intent in more detail. A concise summary is provided in the box below.

Summary of policy intent

- *Schedule 14, paragraphs 8-10 – changing the emphasis for enforcement authorities*

These provisions make amendments to sections 19 and 22A(13) of the Water Industry Act 1991 to change the emphasis for enforcement authorities to consider proceeding under the Competition Act 1998 rather than using enforcement powers under the Water Industry Act 1991.

– *Schedule 17, Part 2, paragraph 4 – repealing the in area trading ban*

This provision will repeal section 2(3)(d)(iii) of the Water Industry Act 1991. Section 2(3)(d)(iii) currently prevents associate companies of English and Welsh incumbent water companies from trading in the area of the parent company, also known as the in area trading ban.

Stakeholder views

To assist the Committee with its consideration of the memorandum, the Committee's Clerk sought views from the Consumer Council for Water, Ofwat, Dŵr Cymru, Severn Trent and Dee Valley.

Dŵr Cymru responded. This response is annexed to this report.

No concerns were raised by these stakeholders.

Process for consideration

The Business Committee remitted this memorandum to the Environment and Sustainability Committee for consideration. In doing so, the Business Committee is obliged to set a timetable for the consideration of the memorandum.

The Business Committee agreed that the Environment and Sustainability Committee should report on the memorandum by the 27 July 2012.

The legislative consent motion will be considered by the Assembly in Plenary on 25 September 2012.

Conclusion

The evidence received did not conflict with the Welsh Government's statement in the memorandum 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 and to ensure consistency in the regulation of the water industry across England and Wales, in line with the Welsh Government's future aspirations for the water industry.'

The Environment and Sustainability Committee agreed to report to the Assembly that it has no objection to the use of this legislative consent motion, as proposed by the Welsh Government.

Sources and additional information

- A copy of the **legislative consent memorandum** is available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=235055&ds=6/2012>
- The **Enterprise and Regulatory Reform Bill** is available on the UK Parliament's website at: <http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html>
- The **Water Industry Act 1991** is available on the legislation.gov.uk website: <http://www.legislation.gov.uk/ukpga/1991/56/contents>
- The **Research Service's Quick Guide** *The Constitution Series: 6 Legislative Consent Motions* is available at: <http://www.assemblywales.org/qg07-0006.pdf>
- **Standing Orders** can be viewed at <http://www.assemblywales.org/bus-home/bus-assembly-guidance.htm> (Standing Order 29 sets out the process for considering a legislative consent memorandum).
- A **record of the legislative consent memorandum's consideration** by the Assembly can be viewed at <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=4027&Opt=0>

Response from Dŵr Cymru

Lord Dafydd Elis-Thomas AC/AM,
Chair,
Environment and Sustainability Committee,
National Assembly for Wales,
Cardiff Bay,
CARDIFF.
CF99 1NA

Date: 12 July 2012

Dear Lord Elis-Thomas,

RE: Legislative Consent Motion - Enterprise and Regulatory Reform Bill.

Thank you for your memorandum of June 2012 inviting Dŵr Cymru to express its views on the Welsh Government's legislative consent motion relating to Schedules 14 and 17 of the Enterprise and Regulatory Reform Bill.

Schedule 14, paragraphs 8-10 – These make amendments to sections 19 and 22A(13) of the Water Industry Act 1991 to change the emphasis for enforcement authorities to consider proceeding under the Competition Act 1998 rather than using enforcement powers under the Water Industry Act 1991.

Dwr Cymru broadly agrees with the Minister's own summary of the impact that this amendment will have; effectively making what is currently an implied duty on enforcement authorities an express one.

Ofwat has already demonstrated that it accepts these principles and published its "Prioritisation principles: application to the Competition Act 1998" in September 2010. The document which has many similarities with OFT guidance acknowledges the interaction with its other sectoral powers i.e. the Water Industry Act 1991 and outlines how decisions on whether to open or continue investigations under the CA 98 will be approached.

The decision therefore to formally acknowledge these responsibilities would appear to be a logical step and the consent motion the appropriate and proportionate legislative vehicle to do so.

Schedule 17, Part 2, paragraph 4 – This provision will repeal section 2(3)(d)(iii) of the Water Industry Act 1991. Section 2(3)(d)(iii) currently prevents associate companies of English and Welsh incumbent water companies from trading in the area of the parent company. This is known as the in area trading ban.

Dwr Cymru supports the removal of this clause from legislation. Customers with premises in more than one water undertaker's area have expressed an interest in having its water services provided by a single company. The current legislation prevents an incumbent undertaker from being able to offer them such a service.

We do not consider that the removal of the legislative clause will have an adverse impact on the competitiveness of the water supply license regime. It should provide greater customer choice and increase the number of customers switching supplier.

Whilst Dwr Cymru recognises the importance of customer choice, it does not itself have plans to utilise the legislation to serve customers outside of its supply region.

We hope that our response has been of some assistance, if however we can be of further help please don't hesitate to contact us.

Sean Larkin
Competition Manager
Dwr Cymru