

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (No.5)

LEGAL ADVICE NOTE

THE ENTERPRISE BILL – APPRENTICESHIPS – INFORMATION SHARING

1.0 Introduction

1.1 The Enterprise Bill (the 'Bill') was introduced in the House of Lords on 16 September 2015.

1.2 The Supplementary Legislative Consent Memorandum ("LCM") to which this note refers was laid in the Assembly on 16 February 2016. The Enterprise and Business Committee and the Communities, Equality and Local Government have previously considered four LCMs in relation to the Bill (although those relate to different provisions).

1.3 Due to time constraints, the Business Committee has not referred this supplementary LCM to a committee and instead it will be debated solely in plenary. The plenary debate is scheduled to take place on Tuesday 15 March 2016.

1.4 Standing Order 29 provides that the Welsh Ministers must lay a Legislative Consent Memorandum where a UK Bill makes provision in relation to Wales:

‘(i) for any purpose within the legislative competence of the Assembly (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the competence of the Assembly); or

(ii) which modifies the legislative competence of the Assembly’.

2.0 Summary of the Bill and its Policy Objectives

2.1 The Bill is sponsored by the Department for Business, Innovation and Skills (“BIS”). The UK Government’s stated policy objectives for the Bill are to:

2.1.2 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

2.1.3 reward entrepreneurship, generate jobs and higher wages for all, and offer people opportunity at every stage of their lives.

2.2 The Bill is in nine parts. In summary, these seek to achieve the following:

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

2.4 Part 2 provides for an extension of the Business Impact Target;

2.5 Part 3 provides for the Primary Authority Scheme to be simplified;

2.6 Part 4 provides for the introduction of a target for the number of apprentices working in public sector bodies and to prevent misuse of the term “Apprenticeship”;

2.7 Part 5 makes provision for the introduction of a legal obligation for insurance claims to be paid within a reasonable timeframe;

2.8 Part 6 provides for the Valuation Office Agency to share non-domestic rates information about properties and ratepayers with local government and also reforms to the non-domestic rates appeals system;

2.9 Part 7 makes provision to update the Industrial Development Act 1982;

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

2.11 Part 9 makes consequential amendments, transitional and saving provisions and deals with commencement.

3.0 Provisions in the Bill for which consent is sought

3.1 Consent is sought for supplementary provisions brought forward in an amendment (NC3) tabled by Rt. Hon Anna Soubry MP, the Minister for Small Business, Industry and Enterprise on 2nd February, and published on 3rd February.

3.2 If enacted, the amendment would introduce a new Part into the Apprenticeships, Skills, Children and Learning Act 2009 (“ASCLA 2009”). The new Part 1A (sections 40A to 40D) will create data sharing powers between Her Majesty’s Revenue and Customs (HMRC), the Secretary of State and the Devolved Administrations in the context of apprenticeship functions. The data sharing gateways are being introduced in light of the UK Government’s intention to bring forward provisions in its Finance Bill to create an Apprenticeship Levy on employers.

3.3 The new section 40A of ASCLA 2009 will confer a function on HMRC allowing it to share information with the Secretary of State. New section 40B will make equivalent provision for data sharing between HMRC and Welsh authorities, Scottish authorities and Northern Irish authorities.

3.4 As it applies to Wales, new section 40B(1) will allow HMRC to disclose information to Welsh authorities for the purpose of the authority’s functions in relation to Welsh apprenticeships. Section 40B(2) will allow Welsh authorities to disclose information to HMRC for the purpose of requesting HMRC to disclose information to them, or for any other purpose connected with the authority’s functions in relation to Welsh apprenticeships.

3.5 Section 40B(3) defines “Welsh authority” and “Welsh apprenticeships” for the purpose of section 40B. Welsh authorities are the Welsh Ministers, persons providing services to the Welsh Ministers, and any body or other person that is prescribed in regulations made by the Secretary of State. Welsh apprenticeships are defined by reference to existing statutory provisions relating to apprenticeships in Wales. Regulations made under

section 40B would prescribe Welsh authorities or amend the definition of Welsh apprenticeships only for the purpose of the data sharing provisions in the new Part 1A of ASCLA 2009. This definition may be amended by regulations made by the Secretary of State.

3.6 The new section 40C will make provision for wrongful disclosure of any information received from HMRC.

3.7 New section 40D sets out interpretation provisions for Part 1A.

3.8 Overall, these provisions apply in relation to Wales.

4.0 Legislative Competence

4.1 It is the view of Legal Services that the provisions in the Bill for which consent is sought fall within the legislative competence of the Assembly so far as they relate to “Economic development and regeneration, including social development of communities” (paragraph 4 of Schedule 7 to the Government of Wales Act 2006) and “Education and training” (paragraph 5 of Schedule 7).

4.2 The legislative consent of the Assembly is therefore, required in accordance with Standing Order 29.6.

5.0 Conclusion

5.1 It is the view of Legal Services that:

I. the amendments achieve the policy objective of the UK Government, which is also supported by the Welsh Government and the drafting is legally correct;

II. the Bill seeks to legislate in areas which are within the Assembly’s legislative competence.

Legal Services

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