

LEGISLATIVE CONSENT MEMORANDUM (SUPPLEMENTARY)

ENTERPRISE AND REGULATORY REFORM BILL 2012

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Minister for Energy, Enterprise and Tourism, is:

“That the Parliament agrees that the relevant provisions of the UK Enterprise and Regulatory Reform Bill, introduced in the House of Commons on 23 May 2012, relating to midata, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Fergus Ewing, Minister for Energy, Enterprise and Tourism, under Rule 9.B.3.1(c) (ii) of the Parliament’s standing orders. The Enterprise and Regulatory Reform Bill (“the Bill”) was introduced in the House of Commons on 23 May 2012. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html>

This is a supplementary LCM for this Bill as a previous LCM was passed for the Green Investment Bank provisions of the Bill on 18 September 2012.

Content of the Enterprise and Regulatory Reform Bill

3. The Bill makes provision in a number of areas, including:
- Establishing the UK Green Investment Bank;
 - employment law;
 - establishment of and provision for the Competition and Markets Authority;
 - abolition of the Competition Commission and the Office of Fair Trading;
 - amendment of the Competition Act 1998 and the Enterprise Act 2002;
 - for the reduction of legislative burdens;
 - about copyright and rights in performances; and,
 - about payments to company directors; and for connected purposes

4. The provisions which relate to this memoranda were tabled as an amendment to the Bill during Committee Stage in the House of Lords on 10 January 2013 and relate to the midata programme. The amendment aims to give consumers access to personal data held and collected by businesses and which will be provided in a portable and electronic format. This will give consumers the information they need to make informed choices about their spending and increase their capacity to budget. The UK Government consulted on midata as part of its consumer empowerment strategy, *Better Choices Better Deals: Consumers Powering Growth*, published in April 2011.

5. While progress has been made on a voluntary basis, the UK Government believes that more progress requires to be made. In July 2012 the UK Government consulted on plans to include a power in the Enterprise and Regulatory Reform Bill to enable the Secretary of State to require suppliers of goods and services to provide customers with a record of their personal transactions in an electronic format. The power itself will not impose a duty on business: such a duty will only be imposed if secondary legislation is subsequently made. The intention is that the right to request information would extend to micro-businesses (less than 10 employees) as well as individual consumers because micro-businesses are similarly disadvantaged in the market and this right would enable them to participate on more even terms.

Provisions which relate to Scotland

6. The UK Government's intention is that the power should enable the right to apply in relation to the whole of the United Kingdom.

Reasons for seeking a legislative consent motion

7. While Westminster has powers under the consumer protection reservation to confer such a right on consumers, the reservation does not extend to micro-businesses which falls within the legislative competence of the Scottish Parliament. Therefore the legislative consent of the Scottish Parliament is required to allow the provisions for micro-businesses to extend to Scotland.

8. The Scottish Government agrees with the UK Government assertion that micro-business could also benefit from accessing their personal transactions data from a supplier i.e. a business to business transaction. There are currently some concerns expressed by SMEs and their representatives about them being signed up to deals that are ill suited for their actual requirements. Allowing micro-businesses to access this information in the same way as individuals will enable them to make more cost-effective decisions. Extending the provision to Scotland will allow Scottish micro-businesses to take advantage of any rights in relation to midata, thus maintaining a level playing field between businesses operating from different parts of the UK.

Financial / Resource Implications

9. There are no financial or resource implications.

Conclusion

10. Extending the relevant provisions in the Bill to apply in Scotland will ensure that micro-businesses would be able to have the same rights to access information as might be given to other micro-businesses in the UK.

11. It is the view of the Scottish Government that it is in the interests of the Scottish people and good governance that the relevant provisions as outlined above which fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

