

LEGISLATIVE CONSENT MEMORANDUM

Finance (No.4) Bill 2012

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Culture and External Affairs, is:

“That the Parliament agrees that the relevant provisions of the Finance (No.4) Bill 2012, introduced in the House of Commons on 26 March 2012, relating to tax incentives for philanthropic gifts (Cultural Gifts Scheme), so far as these matters alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Fiona Hyslop, Cabinet Secretary for Culture and External Affairs, under Rule 9.B.3.1(a) of the Parliament’s Standing Orders. The Finance (No.4) Bill 2012 (“the Bill”) was introduced in the House of Commons on 26 March 2012. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2010-12/financen4/documents.html>

Content of the Finance (No.4) Bill 2012

3. The annual Finance Bill in the UK Parliament sets out the changes to be made to UK tax law for the coming tax year.

Provisions which relate to Scotland

4. The full content of the Bill relates to Scotland as taxation matters are reserved. The Bill includes provision for a scheme (the Cultural Gifts Scheme) which will allow the gifting of objects of pre-eminence to the nation as a tax incentive (i.e. any picture, print, book, manuscript, work of art, scientific object or other item/collection of items that the relevant Minister is satisfied is pre-eminent for its national, scientific, historic or artistic interest or any object that has been kept in a significant building that the relevant Minister sees as desirable to keep with that building). The Scheme would allow up to 30% of the value of a pre-eminent object to be used to settle a portion of personal income or capital gains tax for a period of up to 5 years, or 20% of the value to be used against a company’s income tax for one year only. The Scheme will operate alongside the Acceptance in Lieu (AiL) scheme currently in operation across the UK which allows gifting of a deceased person’s items (land or property) to be offset against inheritance tax.

5. The framework set out in the legislation is also broadly similar to that for the AiL scheme which operates under the National Heritage Act 1980 and the Inheritance Tax Act 1984. The Bill clearly sets out the specific circumstance where Scottish Ministers would have a role in determining the pre-eminence, or otherwise, of items relating to Scotland (either fully or partially). Draft guidance for the Scheme, consulted on by the Department for Culture, Media and Sport, sets out that Scottish Ministers will also play a part in allocating items with Scottish interest to institutions in Scotland.

Reasons for seeking a legislative consent motion

6. The proposed Scheme, as set out in Schedule 14 of the Bill, confers functions on Scottish Ministers. The Bill is therefore a 'relevant' Bill as defined in Standing Orders Rule 9B.1 (1) and the legislative consent of the Scottish Parliament is required to be sought. Under existing competences, the Scottish Parliament could not enact similar legislation conferring discounts for income and corporation taxes.

Consultation

7. The UK Government consulted extensively whilst developing this Scheme and ascertaining how it would operate in practice. After itself consulting with the National Collections and Museums Galleries Scotland, the Scottish Government responded to that consultation and highlighted three principal concerns, which have now been addressed in the revised legislation. The changes are:

- It was previously proposed that ownership of accepted items will rest with the Government rather than the individual institutions. The final proposals now allow for items to be wholly transferred to institutions (detailed within the Guidance).
- It was also proposed that there be an annual national cap on the total amount of tax written off. This was to remain at £20m for both AiL and the new scheme combined. The Chancellor's Autumn Statement in November 2011 raised the cap for 2012-13 from £20m to £30m.
- The Scottish Government suggested donors should be allowed to spread the tax benefits over a number of years rather than just in the year of donation. This is likely to increase the attraction of donating. The proposals now reflect this and allow individuals to spread the benefits over a period up to 5 years (companies are restricted to one year).

Financial Implications

8. Based on the operation of the AiL scheme, any financial implications would be limited and will be met from existing budgets. Conversely, there may be a financial benefit to the collections from items donated to the Scheme.

Conclusion

9. The Scottish Government believes that enabling the operation of the Cultural Gifts Scheme contained within the Finance (No.4) Bill 2012 in Scotland will benefit Scotland and the Scottish collections. The Scottish Government therefore recommends that it should be considered by the UK Parliament.

Scottish Government

April 2012