

## LEGISLATIVE CONSENT MEMORANDUM LOCALISM BILL

### Supplementary Legislative Consent Motion

1. “That the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that, in addition to the provisions referred to in motion NNDM4642, those further provisions which have been brought forward in the Localism Bill relating to the general and charging powers for fire and rescue authorities in Wales and the community right to buy, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

### Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Carl Sargeant AM, Minister for Local Government and Communities, under Standing Order 29.6 of the Standing Orders (SO) of the National Assembly for Wales (the National Assembly). This Legislative Consent Memorandum is laid under SO 29.2. SO 29 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly if a UK Parliamentary Bill makes provision in relation to Wales, for a purpose that falls within the legislative competence of the National Assembly.

3. The Localism Bill (the Bill) was introduced on the 13th December 2010. The Bill can be found at: <http://services.parliament.uk/bills/2010-11/localism.html>

### Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government. It is the UK Government’s aim that the Bill is to devolve greater powers to councils and neighbourhoods, give local communities control over decision making, including through the use of financial incentives, and is a key piece of legislation that affects a wide range of existing housing, planning and local government legislation.

5. The Bill contains provisions to enable the empowerment of local people, the freeing of local government from central and regional control, provision of a share in local growth for local communities and a more efficient and local planning system.

6. The Localism Bill has already been the subject of a Legislative Consent Motion (NNDM4642) in the National Assembly, where the National Assembly gave its consent for the relevant provisions of the Bill, in so far as they fell within the competence of the National Assembly, to be considered by Parliament.

7. The Memorandum that accompanied that Motion is attached at **Annex 1**.

## **Further provisions which require the consent of the National Assembly and policy objectives.**

8. Since the time of introduction of the Bill in December 2010, the UK Government has introduced a number of further provisions by way of Government amendments.

9. A number of amendments were tabled by the UK Government on 10<sup>th</sup> May 2011 which proposed that the clauses in the Bill which provide certain fire and rescue authorities in England with a general power of competence and charging powers, should also be applied to fire and rescue authorities in Wales. The tabled amendments may be accessed on the Parliamentary website at: <http://services.parliament.uk/bills/2010-11/localism.html>

10. It is the view of the Welsh Government that the provisions referred to in paragraph 9 fall within the National Assembly's legislative competence as set out in Part 4 of, and Subject 7 (fire and rescue services and fire safety) of Schedule 7 to the Government of Wales Act 2006..

11. An amendment tabled by the UK Government on 10th May 2011 proposes new Clauses to be inserted into the Bill. In relation to Wales, one of the Clauses provides that the Welsh Ministers will be able to provide advice and assistance in relation to land of community value in Wales. The tabled amendment may be accessed on the Parliamentary website at: <http://services.parliament.uk/bills/2010-11/localism.html>

12. It is the view of the Welsh Government that the provisions referred to in paragraph 11 fall within the National Assembly's legislative competence as set out in Subject 12 (local government) in Part 1 of Schedule 7 to the Government of Wales Act 2006 .

13. As the proposed amendments to the Localism Bill go beyond the consent previously given by the National Assembly, a further Legislative Consent Motion is required under SO 29.

14. These amendments to existing clauses in the Bill and the new clauses will:

### **a) General Power and Charging Powers for Fire and Rescue Authorities**

Provide fire and rescue authorities (FRAs) in Wales with equivalent powers to those contained in the Bill on introduction for FRAs in England. These provisions will extend powers of competence for certain FRAs in England. In accordance with these powers, the FRAs will be able to do anything they consider appropriate for the purposes of carrying out any of their functions, anything they consider appropriate for purposes incidental to their functions, anything they consider appropriate for purposes indirectly incidental to their functions, and anything they consider to be connected with any of their functions or which is incidental to their functions. In addition they will also be

able to do anything for a commercial purpose that they are otherwise authorised to do.

Effectively FRAs in England will be able to do anything, so long as they believe the activity is connected with any of their functions as a Fire and Rescue Authority. The activity does not have to be a direct one, and it will be sufficient if the activity is intended to be beneficial to the performance of their functions. In exercising these powers, FRAs will have the same restrictions placed upon them as local authorities in England under the new general power of competence, in that the power cannot be used to raise taxes or borrow money (other than in line with existing arrangements) and it cannot be used to override existing legislation so as to enable FRAs to do anything that they are already prohibited from doing by any statute.

The Bill also provided FRAs in England with extended charging powers. In accordance with the extended powers FRAs will be able to charge any person (including another FRA) for any action taken by them within the UK, (up to full cost recovery), subject to a number of express exceptions, for example, extinguishing fires, or protecting life and property in the event of fires. The Secretary of State also has the power, by order, to disapply the charging power in respect of the provision of particular services.

The current charging power of FRAs is to be found within section 19 of the Fire and Rescue Services 2004 Act. It permits the Welsh Ministers to prescribe, by order, the activities for which FRAs are permitted to charge. Under the new powers being introduced FRAs in England will be given an autonomous power to charge and there will be no need for the Secretary of State to make an order authorising charging.

The Welsh Ministers considered the clauses relating to the competence and charging powers of FRAs in England and determined that they should be applied to Welsh FRAs. The UK Government amendments introduced at Commons report stage on this topic have the effect of applying these powers to the Welsh FRAs.

#### **b) Community Right to Buy amendment- clauses about provision of advice and assistance**

Makes provision for a relevant authority to provide advice and assistance in relation to land of community value in England in Wales. In relation to Wales, the relevant authority is the Welsh Ministers. The amendment will enable the Welsh Ministers to do anything that they consider appropriate for the purpose of giving advice and assistance to anyone in relation to taking steps or preparing, considering or deciding whether to take steps under the community right to buy provisions, or to a community interest group in relation to bidding or acquiring or preparing to bid for land on an authority's list or bring such land into effective use. Advice or assistance can include the making of arrangements or the provision of financial assistance.

15. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

### **Advantages of utilising this Bill**

16. It is the view of the Welsh Government 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 Wales at the earliest opportunity and will allow the Welsh Ministers to introduce appropriate legislation in accordance with Welsh priorities and concerns.

### **Financial Implications**

17. The financial implications of any subsequent consultation, legislation or guidance arising from a future decision to exercise the power to make Orders under the relevant provisions will be subject to full consideration of affordability and to a Regulatory Impact Appraisal which would include an analysis of costs and benefits.

**Carl Sargeant AM**

**Welsh Minister for Local Government and Communities**

**May 2011**

## ANNEXE 1

### LEGISLATIVE CONSENT MEMORANDUM

#### LOCALISM BILL

#### Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions relating to local government pay accountability, the abolition of the duty to promote local democracy, the abolition of the petitions duty, the discharge of homelessness duties into the private rented sector and the Tenant Services Authority reform in Parts 1 and 6 of the Localism Bill (“the Bill”), as introduced into the House of Lords on 13<sup>th</sup> December 2010, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

#### Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Carl Sargeant AM, Minister for Social Justice and Local Government, under Standing Order 26.4 of the Standing Orders (“SO”) of the National Assembly for Wales (the “National Assembly”). This Legislative Consent Memorandum is laid under SO 26.2. SO 26 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid before the National Assembly, if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within the legislative competence of the National Assembly, or has a negative impact on that competence.
3. The Localism Bill was introduced into the House of Lords on the 13<sup>th</sup> December 2010. The Bill can be found at:

<http://services.parliament.uk/bills/2010-11/localism.html>

#### Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Communities and Local Government. It is the UK Government’s aim that the Bill is to devolve greater powers to councils and neighbourhoods, give local communities control over decision making, including through the use of financial incentives, and is a key piece of legislation that affects a wide range of existing housing, planning and local government legislation.
5. The Bill contains provisions to enable the empowerment of local people, the freeing of local government from central and regional control, provision of a share in local growth for local communities and a more efficient and local planning system.

## Provisions in the Bill for which consent is sought

6. Clauses 21 to 26 of the Bill (**Local Government Pay Accountability**): These provisions aim to increase the transparency of local authority spending on staff in order to aid public understanding and lead to efficiency savings. The provisions require authorities to develop and publish an annual policy on senior officers pay. The senior officers to be covered by the provisions are those appointed upon joint negotiating committee (JNC) terms and conditions. The proposals will apply to principal councils and fire and rescue authorities in Wales.
7. The provisions within the Bill relating to senior officers' pay policy statements fall within the legislative competence of the National Assembly as provided for within Matter 12.5(a) of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") as they relate to "the making of arrangements by relevant Welsh authorities to secure improvement in the way in which they exercise their functions", namely the way in which they determine the terms and conditions of their senior members of staff.
8. Clauses 27 and 28 of the Bill (**Abolish the duty to Promote Local Democracy and Abolish Petitions Duty**): These provisions within the Bill repeal the duties placed on local authorities within the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) to provide facilities for making petitions, and to promote democracy. The relevant sections of the 2009 Act are yet to be commenced in Wales, and have only been brought into partial force in England.

The petitions sections of the 2009 Act require local authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions, and place duties upon them regarding the provision of facilities for the submission of electronic petitions. The intention was to make local decision-making in relation to petitions presented to principal local authorities more transparent, by requiring them to respond to petitions which meet certain criteria and making the responses to petitions publicly available.

The duty to promote democracy requires local authorities to promote understanding amongst the public of public bodies in their area, in terms of what these bodies do and their democratic arrangements and how the public can take part in those arrangements. These provisions are considered ineffective in both England and Wales.

9. The provisions in the Bill repealing the duties in relation to petitions and the promotion of democracy fall within the legislative competence of the National Assembly as provided for within Matter 12.5 (b) of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") which permits the

National Assembly to legislate for the making of arrangements by authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of their functions.

10. Clauses 124 and 125 of the Bill (**Homelessness – Discharge of homelessness duties into the private rented sector**): These clauses amend the Housing Act 1996 with regard to the discharge of homelessness duties to homeless persons by local authorities. Local authorities owe a range of duties to homeless people, and in cases where the household is in a priority need category and have not been responsible for making themselves homeless, the authority is obliged to find housing for them temporarily until they are rehoused. The rehousing duty is at present normally met by providing social housing, and although the duty can be met by providing private rented sector housing, this has to be with the consent of the applicant. The amendment will permit a discharge of the duty on a local authority by provision of private rented sector housing without the consent of the applicant (subject to certain safeguards).
11. The National Assembly has legislative competence in relation to Homelessness under Matter 11.8 of Part 1 to Schedule 5 of the Government of Wales Act 2006 ("GoWA 2006") to legislate in relation to Wales and this provision is within the legislative competence of the National Assembly".
12. Clause 150 of the Bill (**Transfer of functions from the Office for Tenants and Social Landlords (the Office) to the Homes and Communities Agency (HCA)**): Clause 150(2)(a)-(c) amends Part 1 of Schedule 16 to the Housing and Regeneration Act 2008 so as to abolish the Office (known as the Tenant Services Authority ("the TSA")). The 2008 Act is amended so as to create the Regulation Committee of the HCA and to transfer the functions of the Office to the HCA (ie functions concerning the regulation of providers of social housing registered in England). The clauses also contain some changes to the regulatory functions.
13. The National Assembly has legislative competence in relation to Matter(s) 11.2 (social housing providers) and 11.3 (social housing bodies) in Part 1 of Schedule 5 to the Government of Wales Act 2006 ("GoWA 2006") to legislate in relation to Wales. There is no provision for Wales in the Bill relating to TSA reforms, however, because some English registered providers of social housing are landlords of dwellings situated in Wales, it is considered that these provisions are within legislative competence.
14. It is the view of the Assembly Government, therefore, that, to the extent that these provisions are within the National Assembly's legislative competence under Matter(s) 12.5a, 12.5b, 11.8, 11.2 and 11.3, the agreement of the National Assembly is required under SO 26. SO 26

prescribes that a Legislative Consent Motion and Memorandum needs to be tabled and laid, respectively, before the National Assembly, if a UK Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the National Assembly.

### **Advantages of utilising this Bill**

15. These new clauses will;
  - increase the transparency of local authority spending on staff in order to aid public understanding and lead to efficiency savings;
  - repeal provisions which impose duties upon local authorities in relation to the receiving and handling of petition and the promotion of democracy that are considered to be ineffective;
  - amend local authority duties towards homeless persons
  - transfer functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency.
16. It is the view of the Welsh Assembly Government 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 Wales.
17. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

### **Financial Implications**

18. There are no anticipated financial implications for the Welsh Assembly Government of any subsequent implementation of the relevant provisions of the UK Localism Bill which cannot be absorbed as part of existing obligations.

**Carl Sargeant AM**  
**Welsh Minister for Social Justice and Local Government**  
**February 2011**



**LEGISLATIVE CONSENT MOTION**

**LOCALISM BILL**

“To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that the provisions relating to local government pay accountability, the abolition of the duty to promote local democracy, the abolition of the petitions duty, the discharge of homelessness duties into the private rented sector and the Tenant Services Authority reform in Part(s) 1 and 6 of the Localism Bill, as introduced into the House of Lords on 13<sup>th</sup> December 2010, in so far as these provisions fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

This Legislative Consent Motion is tabled by Carl Sargeant, Minister for Social Justice and Local Government, under Standing Order 26.4 of the National Assembly for Wales’ Standing Orders.

Dated