

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

UK ENTERPRISE BILL

Draft Legislative Consent Motion

1. The draft motion which will be lodged by the Cabinet Secretary for Fair Work, Skills and Training is:

“That the Parliament agrees that the relevant provision of the UK Enterprise Bill (“the Bill”), introduced by amendment in the House of Commons on 2 February 2016, which relates to apprenticeships information sharing, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive functions of the Scottish Ministers, should be considered by the UK Parliament.”

Background

2. The Bill was introduced to the House of Lords on 16 September 2015 and deals with a range of UK Government commitments which are intended to support the growth of enterprise. The UK Government states that the Bill will cement the UK’s position as the best place in Europe to start and grow a business by removing unnecessary impediments to business. The Bill can be found at:

<http://services.parliament.uk/bills/2015-16/enterprise.html>

3. The Scottish Government is already creating a supportive business environment in Scotland and is fully committed to helping small business by removing unnecessary burdens. We have a range of successful initiatives to change the stock, flow and culture of regulation in Scotland and deliver better regulation for all. In recognising that Scotland’s businesses are the primary drivers of sustainable economic growth, we welcome policies which we believe will complement our continuing programme to improve the performance of our businesses and make Scotland a more open and competitive place for companies to do business.

4. An initial LCM was lodged by the Scottish Government for the Bill on 9 December 2015. That LCM was due to be voted on in the Chamber on 9 February 2016. The previous LCM can be found here:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/94780.aspx>

Content of the UK Enterprise Bill

5. The Bill contains measures to:

- establish a Small Business Commissioner to empower small businesses to resolve disputes with larger businesses and avoid future issues;
- expand the deregulation target to include regulators;
- require regulators to report on the effect the Regulators’ Code and/or the Growth Duty have had on the way they exercise their functions;

- extend the Primary Authority scheme to make it easier for businesses to join it and benefit from advice on regulatory compliance, and to simplify the way businesses deal with local authorities;
- require insurers to pay insurance claims within a reasonable time;
- simplify and update the Industrial Development Act 1982;
- cap public sector exit payments at £95k; and
- part-privatise the Green Investment Bank.

6. Overall, the Bill currently contains three provisions which are within the legislative competence of the Parliament or alter the executive competence of Scottish Ministers. Two of these provisions, namely the creation of a Small Business Commissioner via a statutory appointment (clauses 1 –13) and the provision of regulation making powers for Scottish Ministers in respect of the cap on public sector exit payments (clause 34), have previously been considered by the Parliament as part of the initial LCM, linked above.

7. The third provision which requires the consent of the Parliament was introduced to the Bill by amendment on 2 February 2016 and concerns the creation of a data sharing gateway between HMRC and Scottish Ministers in relationship to apprenticeships. The amendment is the focus of this supplementary LCM and is discussed below.

New provision which relates to Scotland

8. The amendment introduced on 2 February 2016 in relation to the sharing of information on apprenticeships (Clauses 40A–40D – Apprenticeship Information Sharing) contains provisions which are within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers. The provisions impact on the devolved area of training for employment and add to the functions of Scottish Ministers and consequently they require the consent of the Scottish Parliament.

Reasons for seeking a legislative consent motion

9. The clauses will allow HMRC to disclose information to Scottish Ministers or a relevant Scottish Authority (to be prescribed in regulations made by the Secretary of State) for the purpose of functions in relation to apprenticeships. They also enable Scottish Ministers or a relevant Scottish Authority to receive and request information from HMRC for the purposes of functions in relation to apprenticeships. These provisions fall within devolved competence as they affect training for employment policy which is devolved, and the consent of the Scottish Parliament will be required to extend the measure to Scotland. As stated above, this provision also adds to the executive functions of the Scottish Ministers and the resultant change to the executive competence of the Scottish Ministers requires the approval of the Parliament under Chapter 9B of the Parliament's Standing Orders.

Consultation

10. There has been no formal consultation on the Bill as a whole by the Scottish Government. The UK Government provided a survey setting out how a levy system

might work in practice, what would and wouldn't work for employers who are delivering apprenticeships and how the funds raised from the levy could be used.

11. It also wanted to hear the views of employer representative groups; training providers, third sector organisations and individuals who have a vested interest in this policy. The consultation sought views on the key elements of the apprenticeship levy. The responses to the consultation have helped to inform the development of the policy.

Financial implications

12. There is no direct financial implication to Scotland as a result of agreeing this LCM.

13. The Prime Minister has confirmed that Scotland will get its fair share of the levy. The Scottish Government are working with the UK government to clarify how Scotland's share of the levy will be calculated and allocated. The creation of an information sharing gateway will help the clarification process around allocations.

14. As greater clarity emerges from the UK Government on Scotland's share of the levy, we will work with employers and other stakeholders to explore how the introduction of the levy will align with Scotland's successful apprenticeship programme.

Conclusion

15. It is the view of the Scottish Government that it is in the best interests of the Scottish people and good governance that the relevant provisions outlined above which fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers should be considered by the UK Parliament.

SCOTTISH GOVERNMENT

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