



The Scottish Parliament
Pàrlamaid na h-Alba

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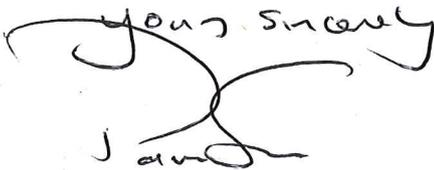
9 January 2015

Dear David,

Legislative Consent Motion: Infrastructure Bill: UK Legislation

I am writing to notify you that, on Tuesday 16 December 2014, the Scottish Parliament agreed to Legislative Consent Motion S4M-11878 on the Infrastructure Bill which is currently under consideration at Westminster.

I attach an extract of the relevant Minutes of Proceedings and associated memorandum.

Yours sincerely


P E GRICE
Clerk/Chief Executive

EXTRACT OF MINUTE OF PROCEEDINGS OF 16 DECEMBER 2014

MINUTES OF PROCEEDINGS

Parliamentary Year 4, No. 60 Session 4

Meeting of the Parliament

Tuesday 16 December 2014

Infrastructure Bill – UK Legislation: The Minister for Business, Energy and Tourism (Fergus Ewing) moved S4M-11878—That the Parliament agrees that the relevant provisions of the Infrastructure Bill, introduced in the House of Lords on 5 June 2014, relating to the administration of the Renewable Heat Incentive, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the functions of the Scottish Ministers, should be considered by the UK Parliament.

The motion was agreed to (DT).

P E Grice
Clerk of the Parliament
16 December 2014

LEGISLATIVE CONSENT MEMORANDUM

INFRASTRUCTURE BILL 2014-15

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Finance, Employment and Sustainable Growth, is:

“That the Parliament agrees that the relevant provisions of the Infrastructure Bill 2014-15 introduced to the House of Lords on 5 June 2014, relating to the administration of the Renewable Heat Incentive, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the functions of Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth under Rule 9.B.3.1(c)(i) of the Parliament’s standing orders. The Infrastructure Bill (“the Bill”) was introduced to the House of Lords on 5 June 2014. The latest version of the Bill can be found at: <http://services.parliament.uk/bills/2014-15/infrastructure.html>

Content of the Infrastructure Bill

3. The Bill is in 5 Parts and contains 5 Schedules.

- Part 1 and Schedules 1 to 3 make provision for the appointment of “strategic highway companies” to manage strategic roads in England in place of the Highways Agency.
- Part 2 makes provision for the control of invasive non-native species through species control agreements and orders and related matters.
- Part 3 makes provision about Nationally Significant Infrastructure Projects, deemed discharge of planning conditions and about the Homes and Communities Agency (HCA) and other bodies. That Part together with Schedule 4 also provides for Land Registry to assume responsibility for the registration of local land charges and to have wider powers to provide information and register services relating to land and other property.
- Part 4 and Schedule 5 make provision about a community electricity right which, if exercised, will give individuals resident in a community, or groups connected with a community, the right to buy a stake in a renewable electricity development in or adjacent to the community.
- Part 5 contains some general provisions that apply to the Bill as a whole.

Provisions Which Relate to Scotland

4. The Government amendments, added to the Bill during Committee stage in the House of Lords, contain provisions relating to the Renewable Heat Incentive (RHI) which extend to Scotland and which will enable:

- appointment of an alternative administrator of the RHI, along with introduction of a new appeal mechanism;
- the assignment of payments made under the RHI to a third party nominated by the owner of the renewable heat plant;
- some elements of existing secondary legislation to be changed using the negative resolution procedure.
- other minor technical changes necessary for the administration and delivery of the requirements under the RHI scheme.

Reasons for seeking a legislative consent motion

5. The Bill did not extend to Scotland on introduction, however amendments lodged on 29 October 2014 aim to amend some of the conditions relating to the RHI. This will involve amending primary legislation which relates to “Heat”. As this falls within devolved competence, the amendments require the consent of the Scottish Parliament.

6. Changes proposed to Section 100 of the Energy Act 2008 all relate to the power to make regulations – the provisions of Section 100(7) which enable the Scottish Ministers to influence the content of the regulations remain unaltered.

7. The RHI, which is funded from general taxation, is administered by Ofgem on a UK wide basis. Section 100 of the Energy Act 2008 currently limits administration of the RHI scheme to either Ofgem or the Secretary of State. There is currently no scope for putting delivery of the scheme out to competitive tender and appointing a body, other than Ofgem, as administrator. The inability to run a competitive process constrains the ability to achieve best value for money. The amendment is essential for ensuring the long term cost effectiveness of the delivery of the RHI scheme and will allow appointment of an alternative administrator of the RHI.

8. Amendment is also required to enable a new appeals mechanism to be established so that decisions by the scheme administrator can be appealed. The new appeals process will strengthen the appeals rights for consumers and businesses. Details on the arbitration of appeals will be set out in secondary legislation and the Scottish Government will work with DECC to ensure any new appeals processes are robust and do not diminish the protections currently afforded to RHI participants. However, this is not contingent upon appointment of a new scheme administrator and it will also allow the flexibility to modify the appeals processes currently managed by Ofgem.

9. The Energy Act 2008 currently requires RHI payments to be made to the owner of the renewable heat plant. The amendments propose to allow for all or part of the payments made under RHI to be made to a third party nominated by the plant owner. This will assist with up-front capital costs, making it easier to raise finance. This change is necessary to help drive uptake of renewable heat through RHI, helping towards meeting the Scottish Governments ambitious target of delivery of 11% of Scottish non-electrical heat demand from renewable sources and significant reductions in carbon emissions from heating.

10. This change is also essential to drive growth in the renewable heat supply chain. The detail will be prescribed in secondary legislation, and Scottish Ministers will have input and influence on their content. Consultation will be undertaken on the regulations before bringing the detail of the changes into effect, and consequently these are unlikely to take place before Summer 2016.

11. Finally, amendments are proposed that would enable certain amendments to be made through existing secondary legislation using negative resolution procedure. This will make the scheme better able to respond to changes in the market, such as when advances in technologies emerge, and should also reduce the amount of time/resource required when small changes are required. Under the current arrangements it can take up to nine months to implement changes, and some trade associations have indicated that this can cause them significant administrative difficulties when aligning important technical changes to product standards. Importantly, safeguards are being taken to retain affirmative resolution procedures for changes where:

- a) the powers concerning the right to levy and return funds in s.100(2)(e)-(g) (and part of s.100(2)(a));
- b) any exercise of the power under Section 100(2)(c) or (h) (covering sanctions and enforcement) or the new power concerning appeals;
- c) any exercise of the power to use regulations to amend Section 100 under s.100(5) or make regulations changing the scope of that section under s.100(6);
- d) any other use of one of the Section 100(2) powers where that use doesn't amend provisions already made in existing regulations.

12. Changes proposed to Section 100 of the Energy Act 2008 all relate to the power to make regulations – the provisions of Section 100(7) which enable the Scottish Ministers to influence the content of the regulations remain unaltered.

Resource Implications

13. There will be no resource implications for Scotland as a result of agreeing this LCM. The RHI scheme is administered on a UK wide basis by Ofgem, with RHI tariffs paid from UK general taxation.

Consultation

14. These amendments are largely technical and there has been no consultation by the UK or Scottish Governments.

15. However, the main detail will be prescribed in secondary legislation upon which Scottish Ministers will be consulted. Additionally, consultation on the regulations will be undertaken before bringing the detail of the changes into effect.

Financial Implications

16. We do not expect that the Legislative Consent Motion to have any financial implications for Scotland, although it has potential to ensure in future there is the

ability to tender for an alternative administrator for the RHI scheme, enabling a competitive process that can deliver best value for money.

Conclusion

17. 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 and which fall within the legislative competence of the Scottish Parliament or alter the executive functions of Scottish Ministers should be considered by the UK Parliament.

SCOTTISH GOVERNMENT

November 2014