

LEGISLATIVE CONSENT MEMORANDUM

INFRASTRUCTURE BILL PROVISIONS FOR THE CONTROL OF INVASIVE NON-NATIVE SPECIES

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2 SO 29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Infrastructure Bill (the “Bill”) was introduced in the House of Lords on 5 June 2014. The Bill can be found at:
<http://services.parliament.uk/bills/2014-15/infrastructure.html>.

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Transport. The UK Government’s policy objectives for the Bill are to bolster investment in infrastructure by allowing stable long term funding, deliver better value for money and relieve unnecessary administrative pressures. The Bill aims to increase transparency of information provision and improve planning processes.
4. The Bill is in 5 Parts:
 - 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 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 general provisions that apply to the Bill as a whole.

Provisions in the Bill for which consent is sought

Part 2, Clause 16: Invasive Non-native Species

5. Part 2, Clause 16 inserts a new subsection 14(4A) in the Wildlife and Countryside Act 1981 (“the 1981 Act”) providing for measures relating to

species control agreements and species control orders to be contained in a new Schedule 9A to the 1981 Act.

6. Clause 16 will, if made law, allow certain environmental authorities to take action to eradicate or control invasive non-native species (“INNS”) that pose serious threats to biodiversity, other environmental interests or social or economic interests.
7. The provisions are based on a Law Commission report “Wildlife Law, Control of Invasive Species”, printed on 10 February 2014:
<http://lawcommission.justice.gov.uk/publications/2612.htm>
8. The provisions of Schedule 9A are summarised below:
 - The “environmental authority” in Wales, that is Natural Resources Wales or the Welsh Ministers, may enter into an agreement, a species control agreement, with an owner of any premises where an INNS is considered to be present. The agreement will set out operations required to be carried out to address INNS and may specify payments to be made to cover costs of the operations.
 - Before issuing an agreement the environmental authority must consider the proportionality of a proposed agreement.
 - If, after 42 days no agreement is reached, an owner refuses to enter an agreement, the terms of an agreement have not been adhered to, or no owner has been identified in relation to the premises, the environmental authority may then issue a species control order;
 - In exceptional circumstances, the environmental authority may issue a species control order in an emergency without first offering a species control agreement;
 - Before making an order the environmental authority must consider the proportionality of the proposed order;
 - An order must state that an owner is required to take action to eradicate, control or prevent INNS, or that an environmental authority proposes to do so, or, in certain cases, both.
 - Only the Welsh Ministers in Wales (and the Secretary of State in England) may make an agreement or order that relates to premises that consist of a dwelling.
 - An appeal may be made by the owner of the affected premises to the First-tier Tribunal (Environment).
 - If an order is not complied with, the environmental authority will have the powers to carry out the operations themselves.
 - Failure to comply with an order, without reasonable excuse, or intentionally obstructing a person from carrying out an operation required or proposed under an order, will be an offence.
 - Powers of entry are provided in relation to the determination, inspection and enforcement of agreements and orders. In certain circumstances, described in paragraph 20(1), entry to premises must be authorised by warrant.
 - Compensation may be payable to the landowner in respect of financial loss.

- The Welsh Ministers must issue a code of practice concerning the application and scope of species control agreements and orders. The Welsh Ministers must consult with Natural Resources Wales before issuing, revising or replacing the code, and the code must be appropriately published.
9. The policy intention is that these powers should be used in exceptional circumstances where a voluntary approach cannot be agreed and there is a clear and significant threat from inaction. It is intended that they will be used primarily to support national eradication programmes; the routine use of these powers for widespread species, such as Japanese knotweed, would generally be considered inappropriate
 10. The provisions include the following powers for the Welsh Ministers to make subordinate legislation:
 - Power to make species control orders,
 - A duty to issue a code of practice concerning the application and scope of species control agreements and orders.
 11. The Welsh Ministers' power to make species control orders is not subject to any Assembly procedure.
 12. A copy of the Welsh Ministers' code of practice must be laid before the National Assembly for Wales. No further Assembly procedure is specified.
 13. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to biodiversity and environmental protection (both under paragraph 6), water quality (under paragraph 19), agriculture (under paragraph 1), economic development (under paragraph 4), and the promotion of health (under paragraph 9) under Part 1 of Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

14. INNS pose serious threats to biodiversity, the water environment, economic prosperity, human health and welfare. The economic impact in the UK alone has recently been estimated as a minimum of £1.8 billion per annum which includes £1 billion to the agriculture and horticulture sectors and over £200m to the construction, development and infrastructure sectors. Early eradication is critical to tackling INNS. As INNS do not respect borders, Wales collaborates with the remainder of the UK to ensure the most effective control of INNS across Great Britain.
15. The Law Commission proposed an approach to species control agreements and orders for Wales and England which is similar to that currently operated in Scotland. The provision for the control of invasive non-native species model which is set out in the Bill is largely drawn from the Law Commission's recommendation.

16. A key component of the draft European Union Regulation on the prevention and management of the introduction and spread of invasive alien species (“the EU Regulation”) that is proposed to come into force on 1 January 2015, subject to being examined by the Council and the Parliament, is that Member States should take measures to eradicate newly arrived species of EU concern within three months of their detection. The lack of these powers places us in a vulnerable position in terms of biosecurity and may undermine our ability to meet our future obligations under the EU Regulation. The proposed Regulation will shortly be examined by the Council and the Parliament. It is expected that the proposed Regulation will be approved but the Council’s and Parliament’s final decision is unknown at the time of drafting this memorandum.
17. There is urgency to introduce this specific Law Commission proposal to control INNS as they have an adverse impact on human health and welfare, the water environment, biodiversity and a high economic cost. In addition, the introduction of species control agreements and orders may assist in meeting key elements of the EU Regulation. It is therefore the view of the Welsh Government that it is appropriate to deal with these provisions in the Bill as it represents the most timely, practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.

Financial implications

18. It is intended that the powers will be used primarily during national or regional eradication programmes after a voluntary approach has failed. National or regional eradication programmes are usually funded by government. However, in Wales there are no dedicated funds for invasive non-native species so resources and budgets would need to be assessed on a case by case basis. In situations where a landowner is responsible for the release of an invasive species it is expected that the landowner would be accountable for costs. The powers will enable action to be taken at an early stage and hence are designed to reduce the spiralling costs to the economy associated with on-going control of invasive species as well as protecting our native biodiversity.

Alun Davies AM
Minister for Natural Resources and Food
June 2014