

**2nd LEGISLATIVE CONSENT MEMORANDUM**  
**ENTERPRISE AND REGULATORY REFORM BILL**

**Draft Legislative Consent Motion**

1. The draft motion, which will be tabled by the Minister of Enterprise, Trade and Investment, is:

*“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions in clause 62 of the Enterprise and Regulatory Reform Bill, as introduced in the House of Lords on 18 October 2012, dealing with Estate Agency Work.”*

**Background**

2. This memorandum has been laid before the Assembly by the Minister of Enterprise, Trade and Investment under Standing Order 42A (2). It is the second memoranda laid before the Assembly in relation to the Enterprise and Regulatory Reform Bill which was introduced in the House of Commons on 23 May 2012. The latest version of the Bill can be found at:  
<http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0045/2013045.pdf>

## Summary of the Bill and its policy objectives

3. Following an amendment made to the Bill at report stage in the House of Commons, provisions have now been added to change the definition of “Estate Agency Work” in the Estate Agents Act 1979. The current definition of ‘estate agency work’ excludes those who publish advertisements or disseminate information. The new provisions would extend this exemption to those situations where buyers or sellers can make direct contact with one another as a result of an advertisement or the dissemination of information and communicate directly with each other on an ongoing basis. This is effected by an amendment to the Estate Act 1979 as follows:-

In section 1 of the Estate Agents Act 1979 (estate agency work), for subsection (4) substitute—

“(4) This Act does not apply to the following things when done by a person who does no other things which fall within subsection (1) above—

(a) publishing advertisements or disseminating information;

(b) providing a means by which—

(i) a person who wishes to acquire or dispose of an interest in land can, in response to such an advertisement or dissemination of information, make direct contact with a person who wishes to dispose of or, as the case may be, acquire an interest in land;

(ii) the persons mentioned in sub-paragraph (i) can continue to communicate directly with each other.”

This amendment will take out of scope of the EAA those intermediaries known as ‘private sale portals’ which merely enable private sellers to advertise their properties and provide a means for sellers and buyers to contact and communicate with one another.

## **Provision Dealing with a Devolution Matter**

4. The Estate Agents Act 1979 deals with consumer protection and as such its subject matter is transferred to Northern Ireland. Any amendments to the Act which extend to Northern also deal with a transferred matter (and fall within the definition in Standing Order 42A of a devolution matter) and therefore trigger the requirement for a Legislative Consent Motion.

## **Reasons for making the Provisions**

5. The provisions will result in a regulatory regime that is proportionate in terms of costs of compliance and targeted to the nature and level of risks involved, retain adequate protection for consumers in higher risk areas, minimise the cost to business and promote innovation in the home buying and selling sector.

## **Reasons for Utilising the Bill rather than an Act of the Assembly**

6. The provision deals with a relatively minor amendment to the Estate Agents Act 1979. The use of a Legislative Consent Motion is the most effective vehicle for updating the Northern Ireland Law at the same time as the rest of the UK.

## **Consultation**

7. Over 400 responses were received from 271 organisations and individuals including traditional estate agents, private sales portals, trade and professional bodies, representatives of Local Authority Trading Standards and consumer bodies. Responses to the consultation showed that there was a range of views about the meaning of the definition of estate agency work and uncertainty about whether the activities of private sale portals fell within

the strict legal scope of the EAA. This uncertainty was acknowledged by some respondents including estate agents and trade bodies and some thought that clarity would be welcome. A large proportion of the responses were from traditional estate agents who were against a change that they felt would create an unlevel playing field and allow disruptive competition with consequent job losses. However, many estate agency respondents misunderstood that the scope of the proposal was limited only to businesses offering a passive intermediary services and that businesses doing any of the following: preparing property particulars; providing advice; getting involved in negotiations or other active agency roles would continue to be with the scope of the Act. Almost all respondents express concern that the protections the EAA afforded consumers should not be diluted as it would lead to confusion and expose the consumer to sharp practices.

### **Human Rights and Equality**

8. No Convention rights are engaged and there are no differential impacts as regards equality and good relations.

### **Financial Implications**

9. There are no financial implications for the Department.

### **Summary of Regulatory Impact**

10. An Impact Assessment (including Regulatory Impact) was prepared by the Department for Business, Innovation and Skills (BIS) for this amendment in respect of the UK. Its overall impacts are expected to be positive for consumers giving greater benefit in terms of choice and leading to improved price competition. This is a deregulatory measure for the businesses concerned and will lead to a reduction in costs and the removal of barriers

to entry. Currently some private sales internet portals may be exempt from the EAA 1979 whilst others may be within its scope, depending on whether they simply provide advertising space or enable prospective parties to a property transaction to make contact in response to an advertisement, for example through an online messaging board. BIS concluded that the limited amendment to the EAA will remove uncertainty whilst ensuring that consumer protection remains adequate. The regulatory change is not expected to have an impact on equality and diversity in relation to race, religion or belief, disability, sex, age, gender reassignment, pregnancy and maternity, or sexual orientation. There are no specific Northern Ireland circumstances that would lead us to expect any difference in terms of impact here.

### **Engagement to date with the Committee for Enterprise, Trade and Investment**

11 .The Committee were informed of the intention to include Northern Ireland in the amendment of the definition of estate agency work, in September 2012. A letter providing the Committee with information on the legislative consent motion issued on 10 December 2012.

### **Conclusion**

12. The view of the Minister of Enterprise, Trade and Investment is that it is in the interests of good government to ensure legislative parity between Northern Ireland and elsewhere in the UK as far as the regulation of Estate Agents is concerned, and therefore it is recommended that the Assembly agrees the further Legislative Consent Motion in relation to the Enterprise and Regulatory Reform Bill in terms of the draft at paragraph 1.

**Department of Enterprise, Trade and Investment**

**17 January 2013**