

# LEGISLATIVE CONSENT MEMORANDUM

## HOUSING AND PLANNING 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 the Housing and Planning Bill dealing with enforcement of the estate agents legislation”*

### Background

2. This memorandum has been laid before the Assembly by the Minister of Enterprise, Trade and Investment under Standing Order 42A. The Housing and Planning Bill (HPB) was introduced in the House of Commons on 13 October 2015. The latest version of the Bill can be found at:  
<http://services.parliament.uk/bills/2015-16/housingandplanning/documents.html>

### Summary of the Bill and its policy objectives

3. The overall purpose of the Bill is to make changes to the law in England and Wales concerning housing, rent charges, planning and compulsory purchase. In addition the HPB will amend the UK-wide Estate Agents Act 1979 (EAA) to define the lead enforcement authority as the “Secretary of State” for the

Department for Business, Innovation and Skills (BIS) or “a person whom the Secretary of State has arranged to be the lead enforcement authority”. The person chosen by the Secretary of state could be a weights and measures authority in GB or the Department of Enterprise, Trade and Investment in Northern Ireland (DETI). In effect the provision will allow the secretary of state to appoint a new lead enforcement authority for the EAA from time to time as necessary. (Weights and measures authorities in GB and DETI already exercise certain functions under the EAA within their respective areas.)

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

4. The amendments of the EAA deals with a transferred matter as they enable the possible appointment of DETI as the lead enforcement authority for the EAA and such a change to departmental functions falls within the definition, in Standing Order 42A, of a devolution matter requiring a legislative consent motion. The inclusion of DETI in this provision will necessitate a minor amendment to the 2015 Consumer Rights Act’s (CRA) generic set of enforcement powers for consumer legislation. This amendment would allow DETI to use the enforcement powers in Part 3 of Schedule 5 CRA for the purposes of the EAA in the event that DETI was at some time in the future to be appointed as the lead enforcement authority for the UK.

### **Reasons for making the Provisions**

5. The HPB will amend the EAA to ensure that the BIS Secretary of State can appoint a new lead enforcement authority from time to time as necessary. The lead enforcement authority is responsible for operating what is in effect a ‘negative licensing scheme’ for those involved in estate agency work, whereby any agent considered to be ‘unfit,’ for example because they have a criminal conviction for

certain specified offences or types of offence, can be banned from carrying out estate agency work. The lead authority is also responsible for approving or withdrawing approval for a redress scheme for estate agency complaints.

6. The current lead enforcement authority, Powys County Council, was appointed in 2014 under arrangements that involved both an Order made under the Public Bodies Act 2011 (PBA) and a tender for a contract for a three year term. There is no scope under the PBA to carry out a further transfer of the relevant functions to a new lead enforcement authority when the current contract expires in 2017 and without an amendment to the EAA the BIS Secretary of State will have no option other than to renew Powys Council contract in 2017. This proposed amendment of the EAA would allow the Secretary of State to invite alternative tenders from other authorities in GB or DETI in Northern Ireland for the role of lead enforcement authority.

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

7. The provision deals with a relatively minor amendment to the UK-wide Estate Agents Act 1979 and a related provision amending Schedule 5 of the UK-wide Consumer Rights Act 2015. The use of a Legislative Consent Motion is the most effective vehicle for updating those Acts as they apply in Northern Ireland law at the same time as the rest of the UK.

### **Consultation**

8. In 2011 BIS carried out a broad ranging consultation in on consumer protection issues, entitled “Empowering and Protecting Consumers” which included the proposal to transfer the OFT’s functions for estate agency to a lead enforcement authority. As part of this consultation process the then BIS Minister Edward

Davey wrote to the First and Deputy First Minister inviting their views on the Consultation. The Consumer Council for Northern Ireland was also included in this consultation. There were no responses from Northern Ireland on this proposal. The UK Government's response to this consultation noted that, "There was a general consensus that a lead local authority, possibly acting through a supra-local structure, could take on OFT's estate agency functions".

## **Human Rights and Equality**

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

## **Financial Implications**

10. There are no financial implications for the Northern Ireland Executive.

(The impact assessment carried out for the HPB as whole does not identify any additional costs or savings for the UK Government due to the amendment of the EAA.)

## **Summary of Regulatory Impact**

11. The amendment of the EAA will not create any new burdens on business and will not create any new safeguards for consumers, but it will ensure that those functions exercised by the lead enforcement authority will continue to be exercised as effectively and economically as possible.

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

12. The Minister wrote to the Committee on 9 October 2015 on the subject of the proposed amendment of the EAA. The Minister advised the Committee that he had agreed to the BIS Secretary of State's request to seek the consent of the Assembly to include Northern Ireland in the amendment of the EAA.

## **Conclusion**

13. The regulation of estate agents under the EAA provides consumers with important safeguards when engaging the services of an agent to sell their property. In the view of the Minister of Enterprise, Trade and Investment the appointment of the lead authority for the EAA is crucial to the proper functioning of the Act and therefore the Secretary of State for Business, Innovations and skills should be empowered to appoint a lead enforcement authority from any of the existing enforcement authorities as necessary to ensure the continued proper functioning of the Act.

14. Therefore, it is recommended that the Assembly agrees to the Legislative Consent Motion in relation to provisions in the Housing and Planning Bill dealing with enforcement of the EAA in terms of the draft at paragraph 1.

**Department of Enterprise, Trade and Investment**

**24 November 2015**