

Northern Ireland Assembly

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Shauna Mageean
Committee for the Office of the First Minister and Deputy First Minister
Room 412
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07 October 2013

Dear Shauna

Legislative Consent Memorandum - UK Intellectual Property Bill- Freedom of Information Provisions

The above-named document was laid today in the Business Office and may be of interest to your Committee.

Yours sincerely

Jennifer Breslin
Business Office

To the Assembly Business Office

Legislative Consent Memorandum – UK Intellectual Property Bill – FOI pre-publication Exemption

I have been asked by the First Minister and deputy First Minister to provide the Business Office with the attached 7 copies of a Legislative Consent Memorandum in relation to the UK Intellectual Property Bill – FOI pre-publication exemption for the purpose of laying before the Assembly under paragraph (2) of standing order 42A.

Should you have any queries on the content of the Memorandum, please contact David Lammey, Head of Information Management in OFMDFM (ext. 88242).

U.K. ASSEMBLY
9 OCT 2013
BUSINESS OFFICE

Colette Kerr
OFMDFM Departmental Assembly Liaison Officer
07 October 2013

LEGISLATIVE CONSENT MEMORANDUM

INTELLECTUAL PROPERTY BILL – FREEDOM OF INFORMATION PROVISIONS

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the First Minister and deputy First Minister, is:

“That this Assembly endorses the principle of the extension of the Freedom of Information provisions in the Intellectual Property Bill on the protection of pre-publication research to Northern Ireland.”

Background

2. This memorandum has been laid before the Assembly by the First Minister and deputy First Minister under Standing Order 42A (2). The Intellectual Property Bill was introduced in the House of Lords on 9 May 2013. The latest version of the Bill (i.e., as amended on Report) can be found at:

<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0044/140044.pdf>

Post-legislative scrutiny of the FOI Act 2000

3. The new Freedom of Information provisions have emerged from the Westminster Justice Committee’s post-legislative scrutiny of the FOI Act 2000 in 2012. In their evidence to the Justice Committee, representatives of the Higher Education sector argued that pre-publication research carried out by universities in England, Wales and Northern Ireland requires greater protection under the FOI Act 2000 (FOIA). For example, Universities UK assert: ‘research is currently subject to the FOIA, and early release of research findings and data can have potentially serious implications for the quality and reputation of UK research, universities’ competitive position nationally and internationally, and relationships with commercial partners’.
4. Moreover, the Russell Group and individual universities told the Committee that the research exemption in the Freedom of Information (Scotland) Act 2002 was working well, and that the Scottish approach should be adopted.

5. The Coalition government - in its November 2012 response - said it appreciated the importance of the UK maintaining and strengthening its position at the forefront of international research. Therefore, it was 'minded to amend FOIA to introduce a dedicated exemption, subject to both a prejudice and public interest test'. This exemption was approved by the Home Affairs Committee in November 2012, and was included in the Intellectual Property Bill introduced in the House of Lords on 9 May 2013. The Bill completed its passage through the Lords on 30 July, and received its first reading in the Commons on 29 August.

The Freedom of Information provisions

6. Clause 20 of the Intellectual Property Bill creates a pre-publication exemption that will bring the FOI Act 2000 in line with the equivalent Scottish legislation (FOI (S) Act 2002), and provide the assurance sought by the Higher Education sector that sensitive research information is not subject to premature release. The new FOI Act section 22A exemption will mirror almost identically the corresponding FOI (S) Act clause, with two minor differences:
 - Section 22A will require the exemption to be engaged if the information will, or is likely to, cause 'prejudice', rather than 'substantial prejudice' as in the FOI (S) Act; and
 - Section 22A will allow public authorities, under certain circumstances, to 'neither confirm nor deny' that they hold the requested information, unlike the FOI (S) Act.
7. These differences will ensure that section 22A is in keeping with the wording of the FOI Act 2000, whilst providing parity with the FOI (S) Act in the protection of pre-publication research.

Reasons for utilizing the Bill rather than an Act of the Assembly

8. Freedom of Information is a 'transferred' matter. However, in 2000, the then Executive decided not to introduce separate FOI legislation and instead agreed that Northern Ireland be covered within the Westminster FOI Bill. And, since the FOI Act came into force, the Executive and Assembly have agreed to the extension of all amendments to Northern Ireland. The Intellectual Property Bill was chosen as the legislative vehicle for the new FOI exemption because it relates closely to intellectual property, especially in terms of its protection.

Consultation

9. OFMDFM officials have consulted with colleagues in the Department for Employment and Learning (the parent Department for the Higher Education sector), and no issues have been raised.

Human Rights and Equality

10. An examination of the Bill's provisions has concluded that it is compatible with the European Convention on Human Rights. No differential impacts have been identified as far as equality groupings are concerned.

Financial Implications

11. There are unlikely to be any public expenditure implications for the Executive. The new exemption mainly provides clarity and reassurance about the ability of the FOI Act to protect sensitive information gathered during research programmes, and is not expected to impose measureable new costs on any group.

Regulatory Impact

12. The Ministry of Justice has established that as the legislative change is cost neutral and does not have a regulatory impact on business, impact assessments are not required.

Engagement to date with the Committee for the Office of the First Minister and deputy First Minister

13. While the Committee for OFMDFM has been alerted to the potential for a Legislative Consent Motion for the FOI provisions in the Intellectual Property Bill, there has been no detailed engagement with it by OFMDFM to date.

Conclusion

14. The primary aim of the new Freedom of Information exemption is to provide the assurance sought by the Higher Education sector that sensitive research information is not subject to premature release.