

LEGISLATIVE CONSENT MEMORANDUM

ANTARCTIC BILL

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 Antarctic Bill to Northern Ireland including the provision making the regulation of activities in Antarctica an excepted matter”

Background

2. This memorandum has been laid before the Assembly by the First Minister and deputy First Minister under Standing Order 42A(2). The Antarctic Bill was introduced in the House of Commons on 20 June 2012. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2012-13/antarctic.html>

Summary of the Bill and its policy objectives

3. The Bill's primary aim is to enhance the protection of the Antarctic environment. It does so by implementing a new Antarctic Treaty known as the Liability Annex, which places a responsibility on Antarctic operators to respond to an environmental emergency caused by their activities or to pay for the costs of the clean up. This reflects the UK's international obligation, as an Antarctic Treaty Consultative Party, to give effect to the Annex in UK law. The Bill also makes changes to the Antarctic Act 1994 to further enhance environmental protections for marine plants and invertebrates and to further protect Antarctica from non-native invasive species.

Provisions which deal with a Devolution Matter

4. During the course of the drafting of the Bill it was identified that Antarctica had been omitted from the list of excepted matters in the Northern Ireland Act 1998 and of reserved matters in the Scotland Act 1998. While no functions under the Antarctic Act 1994 were transferred to the Northern

Ireland Departments on devolution in 1999, the passing of the Northern Ireland Act 1998 has resulted in the Northern Ireland Assembly having legislative competence to implement the UK's international obligations under the Antarctic Treaty. Provisions of the Bill, therefore, deal with transferred matters and, in addition, clause 17 makes the regulation of activities in Antarctica an excepted matter and thereby alters the legislative competence of the Assembly.

5. The coming into force of section 11 of Scotland Act 2012 has now made the regulation of activities in Antarctica a reserved matter as far as the Scottish Parliament is concerned. This effectively means that all responsibility for Antarctica, with the exception of the Assembly's legislative competence, rests with the UK Government.

Reasons for making the Provisions

6. The First Minister and deputy First Minister have considered the UK Government's request that the regulation of activities in Antarctica should be made an excepted matter in terms of the Northern Ireland Act 1998 and have concluded that there is little or no rationale for the retention of legislative competence given that no Department here has, or is likely to seek, any corresponding functional powers. They therefore support clause 17 of the Bill which corrects the current anomaly by making the regulation of activities in Antarctica an excepted matter. This will ensure a consistent approach to the regulation of activities in Antarctica across the UK and ensure that the UK fully and coherently implements all its international obligations arising from the Antarctic Treaty in the future.

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

7. It is appropriate for Westminster to legislate on matters falling within the Antarctic Bill, given that these have directly arisen out of its responsibility for international relations which are an excepted matter. It would also be outside the Assembly's legislative competence to make the regulation of activities in Antarctica an excepted matter.

Consultation

8. A draft Antarctic Bill was presented to Parliament in November 2009 (Command Paper 7635) by the Foreign and Commonwealth Office. A public consultation period ran for three months to 12 February 2010. The consultation was broadly supportive and there were no particular NI issues

raised. It was not considered necessary to carry out further specific consultation with Northern Ireland interests in relation to the current Bill.

Human Rights and Equality

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

Financial Implications

10. There are unlikely to be any public expenditure implications for the Northern Ireland administration.

Summary of Regulatory Impact

11. The conclusion of an impact assessment carried out by the UK Government is that in normal circumstances the Bill is not expected to incur any significant costs either for business or for Government. A minimal rise in procedural expenses and slightly increased insurance premiums will be the only additional day to day costs to business. Costs in the event of an environmental emergency are obviously significantly higher, although in the case of business this should be covered by their insurance.

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

12. While the Committee for OFMDFM has been alerted to the potential for a Legislative Consent Motion for the Antarctic Bill, there has been no detailed engagement with it by OFMDFM to date.

Conclusion

13. The view of the First Minister and deputy First Minister is that in the interests of enhancing the protection of the Antarctic environment and of clarifying the responsibility for doing so, the Antarctic Bill should extend to Northern Ireland and the regulation of activities in Antarctica should be made an excepted matter.

**Office of the First Minister and deputy First Minister
25 January 2013**