

2nd LEGISLATIVE CONSENT MEMORANDUM

FINANCE (No. 4) BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Culture, Arts and Leisure, is:-

“That this Assembly agrees that the provisions in clause 49 of, and Schedule 14 to, the Finance (No. 4) Bill, as introduced in the House of Commons on 26th March 2012, dealing with gifts to the nation, should be considered by the UK Parliament”

Background

2. This memorandum has been laid before the Assembly by the Minister of Culture, Arts and Leisure under Standing Order 42A (2). It is the second memoranda laid before the Assembly in relation to the Finance (No. 4) Bill which was introduced in the House of Commons on 26 March 2012, received its second reading on the 16th April 2012 and commenced the Committee stage on 18th April 2012. The latest version of the Bill can be found at:
<http://services.parliament.uk/bills/2010-12/financen4.html>

Summary of the Bill and its policy objectives

3. The UK Finance (No. 4) Bill was introduced by the Government shortly after the Budget to bring its tax proposals into law. Measures proposed by the Westminster Government in the Finance (No. 4) Bill include several schemes intended to encourage a culture of philanthropy and charitable giving. There are several aspects to this work, some of which relate to reducing tax for people or organisations that give to charity.
4. DCAL agrees with HM Treasury's aim of improving the tax regime as it relates to philanthropic and charitable giving with the aim of providing clarity in this field for both potential donors and recipients. Of particular interest to Northern Ireland is a proposed Cultural Gifts Scheme that will reduce tax liabilities for people who gift *'pre-eminent property to the nation'* as set out in clause 49 of, and Schedule 14 to, the Bill.

Provisions which deal with a Devolution Matter

5. The proposed Cultural Gifts Scheme, advanced by the Department of Culture, Media and Sport (DCMS) will enable individuals or organisations (including corporations) that gift items to institutions to be held in trust for the public (e.g. National Museums NI, PRONI, the

National Trust or a local museum) to have their tax liability reduced by a proportion of the value of the item donated if it is accepted into the Scheme.

6. For individuals this may off-set Capital Gains or Income Tax by up to 30% of the tax liability and for organisations it can be applied to Corporation Tax up to 20% of the tax liability.
7. 'Pre-eminent property' is defined as any picture, print, book, manuscript, work of art, scientific object or other thing (or collection of these) that 'the relevant Minister' is satisfied is 'pre-eminent', i.e. in the context of Northern Ireland the object is of national, scientific, historic or artistic interest or particularly associated with a significant building. It should be noted that this list does not include land or property.
8. If the object is purely or partly of 'Northern Ireland interest'¹, the legislation provides for the Department of Culture, Arts and Leisure (DCAL) (which is defined as "the relevant Minister" for these purposes) to confirm a recommendation that the object was of sufficient historic, artistic, or scientific significance to be accepted into the Scheme. There is also a role for the Department where the object has some interest here. As this changes the functions of a department it comes within the definition of a "devolution matter" as set out in Assembly Standing Order 42A(10) and the agreement of the Assembly is required to the UK Parliament considering the relevant provisions.
9. Accompanying the legislation is the proposed scheme which gives practical details on how the process would operate. The scheme proposes that DCAL, in addition to confirming the pre-eminence of an object, would have a further function in arranging the transfer of the object from the donor to the recipient institution. This may involve the temporary transfer of ownership of the object to the Department.

Reasons for Making the Provisions

10. Conferring this additional power on DCAL will ensure that the interests of the people and institutions of Northern Ireland are represented in the operation of the proposed Cultural Gifts Scheme. This will enable the Scheme to operate in the same way across each devolved administration. It would enable a local Minister to influence the operation of the scheme as it relates to Northern Ireland.

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

11. Taxes or duties applying to the UK as a whole are excepted matters under the Northern Ireland Act 1998 and outside the legislative

¹ e.g. if the item is located here, or if the person making the donation says they want it to be kept here, or if it has a particular relevance to our history or lives.

competence of the Assembly. It would not be possible, therefore, to bring forward the provisions by means of an Assembly Bill.

Consultation

12. Public consultation on the proposal for a Cultural Gifts Scheme was undertaken by HM Treasury between June 2011 and September 2011; a summary of consultation responses was published on 6th December 2011 and is available via:
http://www.hm-treasury.gov.uk/d/condoc_responses_gift_of_art.pdf
13. Further public consultation on the draft Scheme was carried out by DCMS between December 2011 and February 2012.

Regulatory Impact Assessment (RIA) and Financial Implications

14. HM Treasury published a Tax Information and Impact Note (TIIN) for the Finance (No. 4) Bill. The impacts against which the policy has been tested are: equality; competition; small firms; carbon emissions; wider environment; health; sustainable development; rural proofing; justice; and privacy. A copy of the TIIN is accessible via:
http://www.hm-treasury.gov.uk/d/draft_legislation_130312.pdf
15. The financial impact on local institutions receiving donations is expected to be minimal. Museums, libraries and galleries likely to benefit from the Cultural Gifts Scheme will already have access to all of the necessary premises, staff and equipment to preserve and maintain objects to the required standards at no significant additional cost.

Equality Impact Assessment

16. HM Treasury considered the potential equality impacts of this policy and identified no different impact on any equality group. DCAL agrees that the extension to Northern Ireland of the relevant provisions contained in the Bill has no implications for equality of opportunity.
17. In addition DCAL has carried out an Equality Screening of the proposal. The Department concluded that the policy will create a Scheme that will increase the cultural capital of Northern Ireland with no impact to the Department's budget or the NI Block. Furthermore, the Scheme will be beneficial to all as it will make any items accepted into to the Scheme freely available to anyone living, working, studying in or visiting Northern Ireland. Individuals and companies or organisations will also benefit by being able to offset a proportion of the value of the 'pre-eminent property' against their tax liabilities.

Human Rights Act 1998

18. The relevant provisions of the Bill are considered to be compatible with the Human Rights Act 1998.

Engagement to date with the Committee for Culture, Arts and Leisure

19. The Minister for Culture, Arts and Leisure Committee wrote to the Chair of the Culture, Arts and Leisure Committee to alert the committee to the policy content of the provisions in the Finance (No. 4) Bill which extend to Northern Ireland in respect of the Cultural Gifts Scheme and indicate where a Legislative Consent Motion (LCM) would be required. Departmental officials briefed the Committee on the proposed measures on 19th April 2012.

Conclusion

20. It is important to note that if the Assembly does not pass an LCM to allow HM Treasury to make provisions conferring a role on DCAL the Bill will have to be amended to confer the power on the UK Minister for Culture, Media and Sport to decide if an object relevant to Northern Ireland should be accepted under the Scheme and to perform a role during the transfer of ownership.
21. The view of the Minister for Culture, Arts and Leisure is that it is therefore preferable that the provisions of the Bill in respect of conveying additional powers on a Department here should be retained and that so far as these provisions deal with a devolved matter they should be considered by the UK Parliament.

Department of Culture, Arts and Leisure
27th April 2012