



Report on the Supplementary Legislative Consent Memorandum (No.4) for the Enterprise Bill: Public Sector Employment: Restriction on Exit Payments

Background

1. On 5 February 2016, the Minister for Public Services laid a supplementary [Legislative Consent Memorandum](#) ('the Memorandum') for the Enterprise Bill currently before the UK Parliament.
2. On 9 February 2016, the Business Committee agreed to refer the Memorandum to the Communities, Equality and Local Government Committee for consideration. In referring the Memorandum, the Business Committee set a reporting deadline of 10 March 2016.
3. A Legislative Consent Motion relating to the Memorandum is scheduled for debate in plenary on 15 March 2016.

Enterprise Bill

4. The Enterprise Bill ('the Bill') is sponsored by the Department for Business, Innovation and Skills ('BIS'). The UK Government's stated policy objectives for the Bill are to cement the UK's position as the best place in Europe to start and grow a business, by cutting red tape and making it easier for small businesses to resolve disputes quickly and easily; and reward entrepreneurship, generate jobs and higher wages for all, and offer people opportunity at every stage of their lives.
5. Part 8 of the Bill makes provision to cap exit payments for public sector workers. In summary, Part 8 enables HM Treasury to make regulations to cap public sector exit payments at £95,000. These provisions apply in relation to Wales.
6. The Welsh Government's Legislative Consent Memorandum refers to Part 8 of the Bill. The Welsh Government's view is that it is not appropriate for these provisions to be made by means of the Bill as they confer regulation-making powers on the Treasury to confer corresponding provision on the Welsh Ministers.

This would apply to public bodies in Wales wholly or mainly exercising functions which fall within the legislative competence of the National Assembly. However, the Treasury could retain this function, in relation to public-sector workers in Wales, for itself.

7. Instead, the Welsh Government considers that regulation-making powers to cap exit payments made by public authorities that fall within the Assembly's legislative competence ought to be conferred on the Welsh Ministers. The Bill does not provide for this.

Provisions in the Bill for which consent is sought

8. The consent of the National Assembly is sought to Part 8 of the Bill.

Committee consideration and conclusion

9. We considered the Memorandum on 25 February 2016.

10. We do not accept that the UK Government should be seeking to legislate in relation to the terms and conditions for public sector employees in Wales. This should be a matter for the Welsh Government.

11. We therefore endorse the Welsh Government's view that it is not appropriate for these provisions to be made by means of the Bill as they confer regulation-making powers on the Treasury to cap exit payments in Wales, and that consent should not be given in this case as there is no provision for appropriate Welsh Ministers' regulation-making powers.

12. Related to this, we understand that, Assembly Commission staff are likely to be caught by the provisions in the Bill, with the effect that certain exit payments for Commission staff would need to be approved by the Welsh Ministers or the Secretary of State. We do not support this position. We believe that responsibility for the terms and conditions of Assembly Commission staff should be a matter for the Commission, not the Welsh Ministers or the UK Government.

Addendum: revised Supplementary Memorandum

13. Since the agreement of this report, the Minister for Public Services has written to the Committee stating that the UK Government has tabled a number of amendments to the Enterprise Bill which, amongst other things, give the Welsh Ministers the power to relax a cap imposed under the Bill. A copy of the Minister's letter is annexed to this report.

14. The Minister has also laid a [revised supplementary LCM](#), which details the amendments proposed to the Bill, and his decision to promote the Legislative Consent Motion following the tabling of these amendments.



Christine Chapman AM
Chair
Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
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3 March 2016

Dear Christine,

I wish to draw the Communities, Equality and Local Government Committee's attention to an important development relating to the restrictions on public sector exit payment clauses in the Enterprise Bill.

On 5 February, I laid a Legislative Consent Memorandum (Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Enterprise Bill: Public Sector Employment: Restrictions on Exit Payments) which outlined the Welsh Government's intention to oppose the Legislative Consent Motion. My decision to oppose was because the Bill did not give appropriate powers to the Welsh Ministers in respect of devolved workforces. I had raised with the UK Government my concerns over the lack of recognition of the devolved public workforce in Wales over a number of months prior to 5 February. By that date, appropriate powers had not been offered by the UK Government, and I needed to lay the Legislative Consent Memorandum to allow a reasonable amount of time for scrutiny of it.

Following my decision to oppose the LCM the UK Government has changed its stance and proposed last minute amendments that better take account of our devolved powers here in Wales. The most significant of those amendments gives the Welsh Ministers power to relax the £95k cap threshold set by the Treasury where an exit payment is made by a body wholly or mainly exercising devolved functions. This is a broad provision which gives the Welsh Ministers considerable power over the circumstances in which the cap should not apply or where different arrangements would be appropriate. The power is exercisable without a requirement to seek Treasury consent or to comply with the Treasury's directions.

The amendments guarantee that the Welsh Ministers will have power to relax a cap imposed under the Bill. This will enable the Welsh Ministers to allow payments higher than the £95k threshold should it be appropriate to do so. Further, the power will enable Ministers to relax or dis-apply certain aspects of the cap defined in the Treasury's regulations (for example pension strain costs).

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The UK Government has also proposed new amendments to provide regulation-making powers in relation to exit payments made to Members of the National Assembly for Wales, the Welsh Ministers, Deputy Welsh Ministers and First Minister, the Counsel General, members of county and county borough councils, National Park Authorities and Fire and Rescue Authorities.

I have always maintained the Welsh Government is not opposed to the capping of exit payments and that compensation paid in Wales should always represent value for money to the taxpayer. However, it's equally important that decisions and flexibilities around capping within devolved public workforces are made in the Welsh context. I am pleased that the UK Government has now acknowledged this and is now prepared to confer powers on the Welsh Ministers which will enable this to happen. As such I have decided to lay a revised Memorandum setting out the amendments, and my decision to promote the Legislation Consent Motion following the tabling of these amendments.

The UK Government amendments I have outlined above were tabled by Rt Hon Sajid Javid MP, Secretary of State for Business, Enterprise and Skills, on 1 March. They can be found on the Parliament website at the following link:

http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0142/amend/enterprise_rm_rep_0103.1-6.html

The revised Memorandum will be laid as soon as possible

You'll appreciate that the UK Government proposing such late amendments to the Bill is outside of my control. I therefore wanted to bring this change of position to the attention of the Committee at the earliest opportunity.

Best wishes,

A handwritten signature in black ink, appearing to read 'Leighton Andrews', with a long horizontal line underneath it.

Leighton Andrews AC / AM
Y Gweinidog Gwasanaethau Cyhoeddus
Minister for Public Services