

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO. 3)**

### **Small Business, Enterprise and Employment Bill: Public Sector Exit Payments**

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Small Business, Enterprise and Employment Bill (the “Bill”) was introduced in the House of Commons on 25 June 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

### **Summary of the Bill and its Policy Objectives**

3. The Bill is sponsored by the Department for Business, Innovation and Skills (“BIS”). The main policy objectives of BIS for the Bill are to open up new opportunities for small businesses to compete, get finance to create jobs, grow, innovate and export.
4. The Bill makes provision about:
  - improved access to finance for businesses and individuals;
  - regulatory provisions relating to business and certain voluntary and community bodies;
  - the exercise of procurement functions by certain public authorities;
  - the creation of a Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses with their tied pub tenants;
  - the regulation of the provision of childcare and provision about information relating to the evaluation of education;
  - the regulation of companies;
  - company filing requirements;
  - disqualification from appointments relating to companies; and provision about insolvency;
  - the law relating to employment; and for connected purposes.

## **Provisions in the Bill for which consent is sought**

5. Consent is sought for clauses 146-148 of the Bill as amended in Committee in the first House, the House of Commons (clauses 140-142 of the Bill as introduced).
6. In summary, these clauses enable the Treasury to make regulations requiring public sector employees or office holders to repay “exit payments” they receive on leaving their employment if they later return to work in the same part of the public sector.
7. The types of exit payments that will be recoverable under the measures include compensation payments which are made on termination of employment, redundancy, or unplanned loss of employment or loss of office.
8. In order to achieve this, the provisions:
  - a. confer a power on HM Treasury to make regulations requiring the repayment of some or all of any “qualifying exit payment” in specified circumstances;
  - b. provide that a “qualifying exit payment” means a payment of a certain description made to an employee or office holder of a prescribed public sector authority when they leave the employment or office;
  - c. provide that the types of payments that may be specified as a qualifying exit payment include:
    - i. redundancy payments (read in accordance with section 139 of the Employment Rights Act 1996 (which sets out in what circumstances an employee is taken to be dismissed by reason of redundancy)),
    - ii. payments on voluntary exit,
    - iii. payments to reduce or eliminate an actuarial reduction to a pension on early retirement,
    - iv. any severance payment or other ex gratia payment,
    - v. any payment in respect of an outstanding entitlement (such as to annual leave or an allowance),
    - vi. any payment of compensation under the terms of a contract,
    - vii. any payment in lieu of notice,
    - viii. any payment in the form of shares or share options,
  - d. confer a power on the Secretary of State to waive all the whole or any part of any repayment required by virtue of the regulations.
9. The Treasury’s regulations may make provision for a waiver to be given only with the consent of the Treasury, or following compliance with any directions given by the Treasury, and make provision as to the publication of information about any waivers given.

10. The Treasury's regulations may also confer the power to waive the repayment requirement on the Welsh Ministers instead of the Secretary of State where the repayment is made by responsible authorities who wholly or mainly exercise functions in relation to Wales which could be conferred by provision falling within the legislative competence of the National Assembly for Wales.
11. The provisions apply in relation to Wales.
12. These provisions do not include powers for Welsh Ministers to make subordinate legislation.
13. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to Assembly Members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Ministers. Under paragraph 13 of Schedule 13, the Government of Wales Act (2006) the National Assembly has competence in relation to "salaries, allowances, pensions and gratuities for and in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Welsh Ministers."
14. It is also the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they currently relate to a range of subjects in Schedule 7, Part 1 of the Government of Wales Act 2006.
15. These subjects include -
  - Powers and duties of local authorities and their members and officers under paragraph 12
  - Fire and rescue services under paragraph 7
  - Countryside and open space under paragraph 6
  - Organisation and funding of national health services under paragraph 9
  - Audit, examination, regulation and inspection of auditable public authorities under paragraph 14.
16. The provisions would therefore apply to public sector organisations in Wales involved in these subjects including: Local Authorities, Fire and Rescue Services, National Park Authorities, Local Health Boards, NHS Trusts and Special Health Authorities, organisations involved in public administration such as the Wales Audit Office, and Welsh Government Sponsored Bodies. This list is not exhaustive.

## **Advantages of utilising this Bill rather than Assembly legislation**

17. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions for both to be taken forward at the same time in the same legislative instrument.

## **Financial implications**

18. There are no financial implications for the Welsh Government.

**Jane Hutt, AM**  
**Minister for Finance and Government Business**  
**November 2014**