

**REVISED**

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM**

**(MEMORANDUM NO. 4)**

**Enterprise Bill: Public Sector Employment: Restrictions on Exit Payments**

This memorandum is a revision of the memorandum laid on 5 February in relation to restrictions on exit payments. It differs from the earlier memorandum as it has been revised to take account of amendments to the Enterprise Bill tabled on 1 March by the Rt Hon Sajid Javid, Secretary of State for Business, Innovation and Skills.

The amendments to the Bill require the Treasury to confer power on the Welsh Ministers to relax the cap on exit payments. The Treasury's regulations will enable the Welsh Ministers to relax the cap in relation to exit payments made by an authority that wholly or mainly exercises functions that fall within the legislative competence of the National Assembly for Wales.

The amendments also confer regulation-making power on the Welsh Ministers in relation to exit payments made to members of the National Assembly for Wales, the Welsh Ministers, the Deputy Welsh Ministers and First Minister, the Counsel General, members of county and county borough councils and members of National Park Authorities and Fire and Rescue Authorities in Wales.

Details of the relevant amendments are set out at new paragraph 8A below. Paragraphs 13 to 15 are revised to note the Welsh Government's view on whether it is now appropriate for these provisions to be made in the Bill in view of the amendments tabled.

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 Enterprise Bill (the "Bill") was introduced in the House of Lords on 16<sup>th</sup> September 2015. The Bill can be found at:

<http://services.parliament.uk/bills/2015-16/enterprise.html>

The current version of the Bill is the Bill which passed from the House of Lords to the House of Commons (HC Bill 112), and references below to Part and clause numbers are to this version of the Bill.

## Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Business, Innovation and Skills (“BIS”). The UK Government’s main stated policy objectives for the Bill are to:

a) 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

b) Reward entrepreneurship, generate jobs and higher wages for all, and offer people opportunity at every stage of their lives.

4. The Bill is in nine parts:

- Part 1 makes provision to establish a Small Business Commissioner;
- Part 2 provides for an extension of the Business Impact Target to include regulators and supports a shift in the way regulation is delivered by regulators through the Growth Duty and Regulators’ Code;
- Part 3 provides for the simplification of the Primary Authority Scheme;
- Part 4 makes provisions to introduce a target for the total number of apprentices working in public sector bodies and to prevent misuse of the ‘Apprenticeship’ term;
- Part 5 makes provisions to introduce a legal obligation for insurance claims to be paid within a reasonable timeframe;
- Part 6 provides for the Valuation Office Agency (“the VOA”) to share non-domestic rates information about properties and ratepayers with local government and also reforms the non-domestic rates appeals system;
- Part 7 makes provisions updating the Industrial Development Act 1982;
- Part 8 makes provisions to cap exit payments for public sector workers; and
- Part 9 makes general provisions in relation to consequential amendments, transitional and saving provisions and commencement.

**Provisions in the Bill which the Welsh Government consider to be relevant for the purposes of Standing Order 29**

5. The Welsh Government considers that the Assembly's consent would be required for Part 8 of the Bill: "Public Sector Employment: Restrictions on Exit Payments". In summary, Part 8 enables HM Treasury to make regulations to cap public sector exit payments at £95,000.
6. The relevant clauses confer power on the Treasury to make regulations to secure that the total value of payment made to employees and officers of prescribed public sector authorities when they leave their employment or office does not exceed £95,000.
7. The descriptions of exit payment that may be prescribed for the purpose of the cap include—
  - a) any payment on account of dismissal by reason of redundancy;
  - b) any payment on voluntary exit;
  - c) any payment to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect of the cost to a pension scheme of such a reduction not being made;
  - d) any severance payment or other ex gratia payment;
  - e) any payment in respect of an outstanding entitlement;
  - f) any payment of compensation under the terms of a contract;
  - g) any payment in lieu of notice;
  - h) any payment in the form of shares or share options.
8. The regulations made by the Treasury may—
  - a) set out the prescribed public sector authorities to whom the cap applies;
  - b) prescribe what payments are within the scope of the cap;
  - c) provide that certain payments or categories of payments are exempt from the cap; and
  - d) allow for a different amount to be substituted for the cap of £95,000 provided for in the Bill itself.

8A. The amendments tabled on 1 March will give the Welsh Ministers a power to relax the cap in relation to exit payments made by authorities that wholly or mainly exercise devolved functions (functions that could be conferred by Assembly Act) – this would include (but not be limited to) exit payments made to staff of NHS bodies and local authorities in Wales (see new section 153C(6A)(a)).

- a) the Bill will require the Treasury’s regulations to confer this power on the Welsh Ministers (so that the Treasury will be unable to choose not to confer it on the Welsh Ministers)
- b) there would be no requirement for the Welsh Ministers to obtain the Treasury’s consent or to follow Treasury directions before relaxing the cap (this is because the provision in new section 153C(4)(b) does not apply to relaxations granted by the Welsh Ministers)
- c) the Treasury’s regulations may make provision as to the publication of information about any relaxation of the cap
- d) the power given to the Welsh Ministers will enable them to relax the cap:
  - i. in respect of a particular employee or office-holder or a description of employees or office-holders;
  - ii. in relation to the whole or any part of an exit payment, or a description of exit payment.

In addition, the amendments enable the Treasury to confer a power to relax a cap where an exit payment is made by any other authority (that is an authority that does not fall within the Welsh Ministers’ power under new section 153C(6A) (see new section 153C(6A)(b)).

The Welsh Ministers will be given regulation-making power in relation to exit payments made to the following:

- a) Members of the National Assembly for Wales
  - b) the Welsh Ministers, Deputy Welsh Ministers and First Minister
  - c) the Counsel General
  - d) members of county and county borough councils
  - e) members of National Park Authorities in Wales
  - f) members of a Fire and Rescue Authority in Wales
9. All the provisions outlined above apply in relation to Wales.

10. The regulation-making power described above would be subject to the affirmative procedure in the Assembly.
11. It is the view of the Welsh Government that this provision falls within the legislative competence of the Assembly insofar as it relates to a range of subjects in Schedule 7, Part 1 of the Government of Wales Act 2006.
12. These subjects include (but are not limited 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; under paragraph 13 (National Assembly for Wales);
  - Powers and duties of local authorities and their members and officers; under paragraph 12 (Local government);
  - Education, vocational, social and physical training; under paragraph 5 (Education and training);
  - Fire and rescue services; under paragraph 7 (Fire and rescue services and fire safety);
  - Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities, and organisation and funding of national health service; under paragraph 9 (Health and health services).

**Whether it is appropriate for these provisions to be made, and whether they should be made by means of the Bill**

13. The amendments tabled on 1 March ensure that the Welsh Ministers will have power to restrict certain exit payments and relax the restriction in relation to others.
14. In our view, it is appropriate for the Welsh Ministers to have these powers. The Welsh Ministers' powers to relax the cap on payments made by public authorities that wholly or mainly exercise functions that fall within the Assembly's legislative competence enable the Welsh Ministers to give effect to the cap in a way that is appropriate for the circumstances of the devolved public sector in Wales. Accordingly, it is the Welsh Government's view that it is now appropriate for these provisions to be made by means of this Bill, and I will be asking the Assembly to consent to the Legislative Consent Motion when it is debated.

15. It is appropriate to make this provision in a UK Parliamentary Bill because it enables the provision in relation to exit payments to be brought into force at the same time in Wales and in England and Scotland. This enables coherent provision to be made across these administrations, while also allowing the Welsh Ministers to consider whether the provision should be relaxed in relation to the devolved public sector.

### **Financial implications**

16. The sum of exit payments made to an individual would be capped at £95,000. Capping public sector exit payments could reduce the cost of severance arrangements however this would depend on a number of factors.

**Leighton Andrews AM**

**Minister for Public Services**

**March 2016**