

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO. 4)

Enterprise Bill: Public Sector Employment: Restrictions on 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 Enterprise Bill (the “Bill”) was introduced in the House of Lords on 16th 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.

9. All the provisions outlined above apply in relation to Wales.

10. The Bill does not confer power on the Welsh Ministers to make regulations in relation to exit payments made by any public authority in Wales.

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. In the Welsh Government's view 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.
14. In our view, 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 confer those powers on the Welsh Ministers.
15. I intend to table a Legislative Consent Motion under Standing Order 29.6. To comply with Standing Orders, the Motion will seek Assembly Members' consent to the inclusion of the provisions outlined above in the Bill. However the Welsh Government's view is that consent should not be given in this case, as there is no provision for appropriate Welsh Ministers' regulation-making powers.

Financial implications

16. There are no financial implications in not consenting to the Public Sector Exit Payments provisions in the Enterprise Bill.

Leighton Andrews AM

Minister for Public Services

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