

The Welsh Government's Legislative Consent Memorandum on the Public Service Pensions and Judicial Offices Bill

November 2021



1. Background

The UK Government's Public Service Pensions and Judicial Offices Bill

1. The Public Service Pensions and Judicial Offices Bill¹ (the Bill) was introduced into the House of Lords on 19 July 2021. It is sponsored by HM Treasury.
2. The long title of the Bill states that it is:

"A Bill to make provision about public service pension schemes, including retrospective provision to rectify unlawful discrimination in the way in which existing schemes were restricted under the Public Service Pensions Act 2013 and corresponding Northern Ireland legislation; to make provision for the establishment of new public pension schemes for members of occupational pension schemes of bodies that were brought into public ownership under the Banking (Special Provisions) Act 2008; to make provision about the remuneration and the date of retirement of holders of certain judicial offices; to make provision about judicial service after retirement; and for connected purposes."

3. The Bill is currently at Report stage in the House of Lords.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill modifies or falls within the Senedd's legislative competence.
5. On 11 August 2021, the Counsel General and Minister for the Constitution, Mick Antoniw MS, laid before the Senedd a Legislative Consent Memorandum² (the Memorandum) in respect of the Bill.

¹ Public Service Pensions and Judicial Offices Bill, as introduced [HL Bill 44]

² Welsh Government, [Legislative Consent Memorandum, Public Service Pensions and Judicial Offices Bill](#), August 2021

6. The Business Committee agreed to refer the Memorandum to the Legislation, Justice and Constitution Committee, and the Equality and Social Justice Committee, with a reporting deadline of 4 November 2021.³

Provision for which the Senedd's consent is required

7. Paragraphs 6 and 7 of the Memorandum set out the Welsh Government's assessment of the provisions in the Bill which require the Senedd's consent.

8. The clauses of the Bill that require Senedd consent are set out in Part 3 of the Bill. The relevant clauses are:

- Clause 103 and Schedule 1, which raise the mandatory retirement age for judicial office-holders to 75.
- Clauses 105 to 109 and Schedule 3, which create a new "sitting in retirement office" for judicial office-holders who have retired. If a judicial office is listed in Schedule 3 to the Bill, then a "sitting in retirement" equivalent of that office will be created. This new office will be given the name of the original judicial office followed by the words "(sitting in retirement)". Further, the "appropriate national authority" is given a power to add to the list of judicial offices in Schedule 3 (i.e. a power to create more "sitting in retirement offices"). A "sitting in retirement office" will be subject to a maximum age of 75.
- Clause 110 and Schedule 4, which make amendments that are consequential on Part 3 of the Bill. The "appropriate national authority" is also given power to make regulations that are consequential on Part 3 of the Bill.

9. The UK Government⁴ and the Welsh Government are in agreement as to the provisions within the Bill which require consent.

Reasons for making provision for Wales in the Bill

10. Paragraphs 8 to 13 of the Memorandum set out the reasons for making provision for Wales in the Bill.

11. Paragraph 10 of the Memorandum states that:

³ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum on the Public Services Pension and Judicial Offices Bill](#), September 2021

⁴ Public Service Pensions and Judicial Offices Bill, [Explanatory Notes](#), July 2021, Annex 1

"The revised mandatory retirement age will apply to the Welsh tribunals as defined in section 59 of the Wales Act 2017. For those tribunals with a mandatory retirement age, that age will increase from 70 to 75. Those tribunals are: the Agricultural Land Tribunal for Wales; the Mental Health Review Tribunal for Wales; the Residential Property Tribunal for Wales; and the Welsh Language Tribunal for Wales. For the Special Educational Needs Tribunal for Wales and the Adjudication Panel for Wales, with no current mandatory retirement age, the Bill will impose a maximum retirement age of 75."

12. In addition, the Memorandum states:

"A consistent mandatory retirement age and approach to sitting in retirement across England and Wales will avoid jurisdiction picking by candidates for judicial office who may, for example, choose to apply for appointment in England and Wales rather than to a Welsh tribunal if current arrangements were to continue in Wales alone as, on that basis, they would have a shorter and potentially less flexible judicial career in Wales than in England. In addition, a differential position would potentially inhibit cross deployment between judges in the Welsh tribunals and the First-tier and Upper-tier tribunals. For these reasons, there is benefit to the justice system in Wales for the provisions in the Bill to apply to Wales."

The on-going Law Commission project on the reform of the Devolved Tribunals in Wales will report in autumn 2021. Taking forward the Law Commission's report will provide the opportunity for the development of new Wales specific policy relating to Welsh tribunals, including on judicial offices, and to consolidate its implementation into Welsh legislation. The changes now set out in the Bill will, however, be made and implemented far sooner than will be the case in respect of any future legislation in response to the Law Commission's report."⁵

13. The Memorandum notes that amendments to the Bill during its passage through the UK Parliament will be kept under review and that a Supplementary Legislative Consent Memorandum may be necessary.⁶

⁵ Memorandum, paragraphs 12 and 13

⁶ Memorandum, paragraph 15

14. The Memorandum concludes:

*"The UK Government's proposals in the Bill are intended to remedy the differential treatment between salaried and fee-paid judges and provide for flexibility to meet business need through judges sitting in retirement. It is the view of the Welsh Government that it is appropriate to make equivalent provision for the Welsh tribunals as defined in section 59 of the Wales Act 2017, and to utilise the Bill to make the required legislative changes at this time, noting the on-going Law Commission project and the development of Wales specific policy in relation to tribunals in Wales."*⁷

Standing Order 30 Written Statement by the Welsh Government

15. On 12 August 2021, the Deputy Minister for Social Partnership, Hannah Blythyn MS (the Deputy Minister), laid before the Senedd a written statement under Standing Order 30 in respect of the Bill.⁸

16. The statement notes that there are certain provisions within the Bill "which will modify the Welsh Ministers' functions, but do not require a Legislative Consent Motion under Standing Order 29 as the Senedd does not have legislative competence in respect of those provisions."

2. Committee consideration

17. We considered the Memorandum at our meeting on 11 October 2021.⁹

Our view

18. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, and we agree with that assessment.

19. Further, we note that the Bill includes provisions which modify the Welsh Ministers' functions but in a way that is outside the legislative competence of the Senedd and so consent is not required for those clauses. Instead, for such clauses, Standing Order 30 requires the Welsh Government to lay a written statement before the Senedd and we note the statement laid by the Deputy Minister as a result.

⁷ Memorandum, paragraph 16

⁸ Welsh Government, [Written Statement: Public Service Pensions and Judicial Offices Bill](#), 12 August 2021

⁹ [Legislation, Justice and Constitution Committee, 11 October 2021](#)