

Report on the Legislative Consent Memorandum for the Public Service Pensions and Judicial Offices Bill

November 2021

1. Background

1. This report considers the Legislative Consent Memorandum (the LCM) for the Public Service Pensions and Judicial Offices Bill. The LCM was laid on 11 August 2021.
2. On 14 September 2021, the Business Committee referred the LCM to the Equality and Social Justice Committee and the Legislation, Justice and Constitution Committee for consideration.
3. The reporting deadline for the LCM is 4 November 2021. The Equality and Social Justice Committee considered its report at its meeting on 1 November 2021.

2. The LCM

4. Paragraphs 3 to 5 of the LCM summarise the Bill and its objectives. Paragraphs 6 and 7 summarise the provisions for which consent is being sought. Paragraphs 8 to 13 set out the Welsh Government's views on the reasons for making these provisions for Wales in the Bill. Paragraph 14 sets out the financial implications of the Bill.



5. In particular, paragraph 5.iii states *[P]art 3 makes provision for judicial offices. It imposes a mandatory retirement age of 75 for certain judicial offices and makes provision for judges sitting in retirement (but not beyond the age of 75).*

3. Provisions in the Bill for which consent is sought

6. The clauses of the Bill that require Senedd consent are set out in Part 3 of the Bill and are summarised below. In brief, Part 3 imposes a mandatory retirement age of 75 for certain judicial offices and makes provision for judges sitting in retirement (but not beyond the age of 75).

Clause 103 and Schedule 1: raise the mandatory retirement age for judicial office-holders to 75.

To the extent that this applies to devolved tribunals, the purpose of clause 103 and Schedule 1 is devolved and therefore Senedd consent is required

Clauses 105 to 109 and Schedule 3: 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.

To the extent that this applies to devolved tribunals (and the Welsh Ministers as the appropriate national authority), the purpose of clauses 105 to 109 and Schedule 3 is devolved and therefore Senedd consent is required.

Clause 110 and Schedule 4: 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.

To the extent that this applies to devolved tribunals (and the Welsh Ministers as the appropriate national authority), the purpose of clause 110 and Schedule 4 is devolved and therefore Senedd consent is required.

7. Devolved tribunals include:
- a. the Agricultural Land Tribunal for Wales;

- b. the Mental Health Review Tribunal for Wales;
- c. a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (including a leasehold valuation tribunal and a residential property tribunal);
- d. the Education Tribunal for Wales;
- e. a tribunal constituted in accordance with Schedule 3 to the Education Act 2005 (registration of inspectors in Wales: tribunals hearing appeals under section 27);
- f. a tribunal drawn from the Adjudication Panel for Wales;
- g. the Welsh Language Tribunal.

8. On 12 August 2021 the Deputy Minister for Social Partnership laid a written statement before the Senedd under Standing Order 30 – Notification in relation to UK Parliament Bills. The written statement notes that certain clauses of the Bill modify functions of the Welsh Ministers, but in a way that is outside the legislative competence of the Senedd. Therefore, 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.

4. Reasons for making these provisions

9. Paragraphs 8 to 13 set out the Welsh Government’s views on the reasons for making these provisions for Wales in the Bill.

10. In particular, paragraph 12 sets out the Welsh Government’s view that “[a] consistent mandatory retirement age and approach to sitting in retirement across England and Wales will avoid jurisdiction picking by candidates for judicial office” and that there “is benefit to the justice system in Wales for the provisions in the Bill to apply to Wales.”

Paragraph 13 states that *“The on-going Law Commission project on the reform of the Devolved Tribunals in Wales will report in autumn 2021”* and acknowledges that *“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.”*

11. In paragraph 16 the Welsh Government conclude that:

“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."

5. Committee consideration and conclusion

12. We considered the LCM at our meeting on 1 November 2021.

13. We note the arguments made by the Welsh Government that a consistent mandatory retirement age will avoid the risk of "jurisdiction picking for judicial offices".

14. In terms of legislative consent, we note the provisions for which consent is being sought. We also note the Welsh Government's reasons for making provision for Wales in the Bill, rather than via Senedd legislation, including the relevance of the reporting timescale of the Law Commission project on the reform of the Devolved Tribunals in Wales.

15. One Member expressed concern about the principle of legislation which will apply in Wales being enacted via a UK Government Bill rather than a Welsh Government Bill.

16. The majority of the Committee has no objection to the agreement of the Motion.