

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chynghor i Aelodau'r Cynulliad a'u cynorthwyyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cynghor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

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Communities, Equality and Local Government Committee

Legal Advice Note

LEGISLATIVE CONSENT MEMORANDUM – PUBLIC SERVICE PENSIONS BILL

Background

1. On the 2nd October 2012, the Minister for Finance and Leader of the House gave notice of a motion in the following terms –
“To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Public Service Pensions Bill as introduced into the House of Commons on 13 September 2012 relating to the restrictions to be applied to new pension schemes for public bodies, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament .”
2. The Legislative Consent Memorandum (“LCM”) was considered on the 9th October 2012 by the Business Committee, who agreed, in accordance with Standing Order 29.4, agreed to refer it to the Constitutional and Legislative Affairs Committee for scrutiny. The Business Committee agreed that the Committee should report on the LCM by 15 November 2012 to allow the motion to be debated in plenary on 20 November 2012. This Note is intended to inform that consideration.

The Bill

3. The Public Service Pensions Bill was introduced into the House of Commons on 13 September 2012 by the Chancellor of the Exchequer. The Second Reading debate is scheduled for the 22nd October. The detailed background to the Bill can be found in paragraphs 3–11 of the Explanatory Notes to the Bill at
<http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0070/en/2013070en.htm>
4. The Bill would change the law in all parts of the United Kingdom, and legislative consent will be sought from each of the devolved legislatures.

This is explained in the Explanatory Notes that accompanied it on introduction in the Commons as follows –

TERRITORIAL EXTENT

12. This Bill extends to England and Wales, Scotland and Northern Ireland.

13. The Northern Ireland Assembly's consent will be sought in relation to the provisions of this Bill to make schemes for pensions and other benefits that are within the competence of that Assembly.

14. This Bill contains provisions that trigger the Sewel Convention in Scotland. The provisions relate to the pensions of certain members of the Scottish judiciary and a power to require the closure and reform of pension schemes in public bodies for which the Scottish Parliament has competence. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. We have sought "in principle" agreement from Scottish Ministers to seek a Legislative Consent Motion for these provisions. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will also be sought for them.

15. The consent of the National Assembly for Wales will be sought in relation to provisions in this Bill which apply to new pension schemes for public bodies and" statutory office holders; the National Assembly for Wales has competence in relation to pension schemes for Assembly Members, Welsh Ministers and members of local authorities."

These Explanatory Notes were prepared by the Treasury to assist consideration of the Bill.

5. The purpose of the Bill is generally to set out the new arrangements for the creation of schemes for the payment of pensions and other benefits. It provides powers to Ministers to create such schemes according to a common framework of requirements. The Bill also provides powers for the Treasury to set specific technical details of certain requirements and gives powers to the Pensions Regulator to operate a system of independent oversight over the operation of these schemes..

6. The Explanatory Notes explain further that:

"It is intended that the powers in the Bill will supersede powers, including those contained in the following legislation, to create schemes for the payment of pensions and other benefits:

- Superannuation Act 1972, for civil servants, people employed in local government service, teachers and persons engaged in health services;*
- Fire and Rescue Services Act 2004;*

- *Armed Forces (Pensions and Compensation) Act 2004;*
- *Police Pensions Act 1976;*
- *Judicial Pensions and Retirement Act 1993; and*
- *Superannuation (Northern Ireland) Order 1972.*

The Bill protects the benefits already earned by members of existing public service pension schemes and allows continued membership of those schemes for certain categories of person who are closest to retirement.”

Legislative Competence

7. The provisions to which the LCM refers come within the National Assembly’s legislative competence under Subjects 4 (Economic Development) and 13 (National Assembly for Wales) of Schedule 7 to the Government of Wales Act 2006.

8. The wording under heading 4 (Economic Development) was amended by the National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007 (SI 2007/2143) to include a specific exception in relation to occupational and personal pension schemes. This in turn was amended by the National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010. In consequence the exception to the Assembly’s legislative competence in relation to pensions contains a carve out for matters referred to in the LCM and reads as follows:

“Occupational and personal pension schemes (including schemes which make provision for compensation for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity resulting from injury or disease), apart from schemes for or in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General or Deputy Welsh Ministers and schemes for or in respect of members of local authorities.”

9. Heading 13 (National Assembly for Wales) contains the following specific reference to pensions: *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.* Thus, when the exception for pensions was inserted by the 2007 order, it was necessary to include a carve out so that the exception did not contradict the competence granted under heading 13. The further carve out members of local authorities was made by the 2010 order.

The Consent Memorandum

10. The Legislative Consent Memorandum identifies clause 27 as the one that relates to the Assembly's legislative competence. Clause 27 identifies the requirements in the Bill that will apply to new public body pension schemes, which would include those for Assembly Members, the First Minister, Welsh Ministers, the Counsel General or Deputy Welsh Ministers and for or in respect of members of local authorities.

11. There is a further issue in relation to competence. Clause 16 requires that no benefits are to be provided under an existing scheme listed in Schedule 5. These include "A scheme constituted by paragraph 6(3) of Schedule 11 to the Welsh Language (Wales) Measure 2011 (nawm 1)". Paragraph 6(3) reads as follows:

*"(3) The Welsh Ministers may pay—
(a) pensions to, or in respect of, persons who have been members of the Tribunal, and
(b) amounts for or towards provision of pensions to, or in respect of, persons who have been members of the Tribunal."*

12. The Assembly's legislative competence in relation to the Welsh language under Schedule 7 is much broader than it was under Schedule 5 to the Government of Wales Act 2006. If this provision was within the Assembly's legislative competence in 2011, it remains so now. It is therefore unclear why the Welsh Government has not made reference to this in the LCM.

13. There are other specific Welsh references in the Bill. Clause 1 excepts scheme regulations made by Welsh Ministers relating to fire and rescue workers from those for which the consent of the Treasury is required. Welsh Ministers have a power to make schemes in relation to the fire and rescue services, but the National Assembly has no power to make primary legislation on the subject because of the exception of occupational and personal pension schemes from its legislative competence. Clause 20(5) contains a requirement to consult the National Assembly if certain changes are proposed to such schemes.

14. This Bill will make no changes to the legislative competence of the National Assembly. Accordingly, it will remain within the Assembly's competence to make provision in Acts of the Assembly that are not consistent with the requirements of the current Bill.

Conclusion

15. The Bill will make significant changes to legislation for public sector pension schemes. It includes specific provisions relating to pension ages for Members of parliament and Members of the European Parliament as well as many public sector workers. The issue for Assembly Members to consider is whether they are content to be

included (with the Counsel General and members of Welsh local authorities) in the legislation, whilst retaining the competence to legislate differently at a later date in those limited cases if they see fit.

Legal Services

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