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Y Gweinidog Cyllid ac Arweinydd y Ty
Minister for Finance and Leader of the House



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/JH/0391/12

David Melding AM
Chair
Constitutional and Legislative Affairs
Committee
Cardiff Bay
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31 October 2012

Dear David,

Public Service Pensions Bill: Legislative Consent Motion – Invitation to give evidence to the Constitutional and Legislative Affairs Committee

Thank you for your letter of 25 October inviting me to attend the Constitutional and Legislative Affairs Committee meeting on 5 November. Unfortunately, I will be unable to attend on this occasion. I have therefore set out my response to the committee's comments regarding the Public Service Pensions Bill Legislative Consent Memorandum (LCM) below.

Why Welsh Ministers' powers in relation to fire and rescue services and Welsh Language Tribunal pension arrangements were not referred to in the Memorandum.

The legislative consent memorandum did not refer to the powers of Welsh Ministers because these matters did not bear directly on the issue of the motion, that being the legislative competence of the National Assembly for Wales to create new pension schemes for Assembly Members, Welsh Ministers and members of local authorities.

The Bill does address areas where Welsh Ministers have executive functions. Welsh Ministers have powers, and have exercised their powers, under the Fire and Rescue services Act 2004 to make orders relating to the pension schemes for firefighters. The statutory power extends to all employees of fire and rescue authorities but non-firefighter employees are covered within the Local Government Pension Scheme.

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The other pension arrangement you mention is within the Welsh Language (Wales) Measure 2011 which enables the Welsh Ministers to make pension payments to the members of the Welsh Language Tribunal. To date no such arrangements have been put in place.

The Bill's provisions will mean that the firefighters pension schemes and the Welsh Language Tribunal members' scheme (if there were one) would close and be replaced by schemes which comply with the requirements of the Bill.

I will therefore make a written statement to the Assembly on the Bill's effects on the powers of Welsh Ministers, as opposed to those matters within legislative competence in due course.

What arrangements are now proposed for the pensions of members of the Welsh Language Tribunal?

Preparatory work in relation to the establishment of the Welsh Language Tribunal and appointment of Tribunal members is underway. The Welsh Language Measure gives the Welsh Ministers a power to pay pensions to, or in respect of, persons who have been members of the Tribunal. It also gives the Welsh Ministers a power to pay amounts for or towards provision of pensions to, or in respect of, persons who have been members of the Tribunal. This is being considered as part of the preparatory work for the establishment of the Tribunal.

Whether it was intended that the Assembly should have a more limited competence under Schedule 7 than under Schedule 5; and if so, why; if not, what is being done to seek to restore the competence, and whether the present Bill provides an opportunity to do so

The Welsh Government's view is that in Schedule 7 to the Government of Wales Act 2006 the term "local authorities" includes both National Park authorities (NPAs) and fire and rescue authorities (FRAs). I understand that this view is shared by the Wales Office. Accordingly the carve out for pensions for the members of local authorities means that there is also a carve out for pensions for members of NPAs and FRAs.

You suggest that the pension provision made in the Welsh Language Measure was possible under Schedule 5 because the pension provision was inserted as being incidental to the purposes of the Measure but that is not permissible under Schedule 7. The Welsh Government's view is that if the Assembly was to consider making a Welsh Language Act now, the "incidental" power would still be available even though pensions are in general excepted. We believe this is clear from section 108(3) to (5) of the Government of Wales Act 2006.

Accordingly I do not consider that there is a need to restore any competence in this area.

Whether the Assembly Commission should have the opportunity to take a view formally on the memorandum / motion before it is considered in Plenary

I will write to the Assembly Commission seeking their view on this matter. The debate on agreeing the LCM is scheduled for 20 November. I would be content to postpone the debate to provide the Commission sufficient time to consider the issue if requested.

In that event, we would have to balance the need to allow as much time as we would wish with the parliamentary timetable, and I would wish any new date to be agreed with Business Committee.

*Yours sincerely,
Jane*

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