



Adroddiad ar y Memorandwm Cydsyniad Deddfwriaethol Atodol ar gyfer Bil Pensiynau'r Gwasanaeth Cyhoeddus

Cefndir

1. Ar 2 Hydref 2012, rhoddodd y Gweinidog Cyllid ac Arweinydd y Tŷ (“y Gweinidog”) hysbysiad ynghylch cynnig fel a ganlyn –

“Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried darpariaethau Bil Pensiynau'r Gwasanaeth Cyhoeddus fel y'i cyflwynwyd yn Nhŷ'r Cyffredin ar 13 Medi 2012, sy'n ymwneud â'r cyfyngiadau sydd i'w cymhwyso i'r cynlluniau pensiwn newydd ar gyfer cyrff cyhoeddus, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru.”

2. Trafododd y Pwyllgor Busnes y Memorandwm Cysyniad Deddfwriaethol ar 9 Hydref 2012 ac, yn unol â Rheol Sefydlog 29.4, cytunodd y Pwyllgor i'w gyfeirio at y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol (“y Pwyllgor”) er mwyn iddo graffu arno. Cytunodd y Pwyllgor Busnes y dylai'r Pwyllgor gyflwyno adroddiad ar y Memorandwm Cydsyniad Deddfwriaethol i'r Cynulliad erbyn 15 Tachwedd 2012, er mwyn i'r cynnig gael ei drafod yn y Cyfarfod Llawn ar 20 Tachwedd 2012. Cafodd y dyddiad cau hwn ei ymestyn ar ôl hynny i 3 Ionawr 2013, er mwyn caniatáu i'r Pwyllgor ystyried barn Comisiwn y Cynulliad.

Y Bil

3. Cyflwynwyd Bil Pensiynau'r Gwasanaeth Cyhoeddus¹ yn Nhŷ'r Cyffredin ar 13 Medi 2012 gan Ganghellor y Trysorlys. Cwblhawyd y Cyfnod Adrodd yn Nhŷ'r Cyffredin ar 4 Rhagfyr 2012 a bydd y Bil yn awr yn mynd i Dŷ'r Arglwyddi er mwyn ei ystyried.

4. Byddai'r Bil yn newid y gyfraith ym mhob rhan o'r Deyrnas Unedig, a cheisir cydsyniad deddfwriaethol gan bob un o'r deddfwrfeydd datganoledig.

¹ Bil Pensiynau'r Gwasanaeth Cyhoeddus (Bil Senedd y DU)
http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0070/cbill_2012-20130070_en_1.htm

Caiff hyn ei esbonio yn y Nodiadau Esboniadol a gafodd eu cyflwyno gyda'r Bil yn Nhŷ'r Cyffredin -

"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."

5. Diben y Bil yn gyffredinol yw pennu'r trefniadau newydd ar gyfer creu cynlluniau i dalu pensiynau a buddion eraill. Mae'n rhoi pŵer i Weinidogion greu cynlluniau o'r fath yn unol â fframwaith cyffredin o ofynion. Mae'r Bil hefyd yn rhoi pwerau i'r Trysorlys bennu manylion technegol penodol rhai gofynion ac yn rhoi pwerau i'r Rheoleiddiwr Pensiynau gynnal system oruchwyllo annibynnol ar y modd y gweithredir y cynlluniau hyn.

6. Mae'r Nodiadau Esboniadol yn egluro:

"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.”

Cymhwysedd Deddfwriaethol

7. Mae'r darpariaethau y mae'r Memorandwm Cydsyniad Deddfwriaethol yn cyfeirio atynt yn dod o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol o dan Bwnc 4 (Datblygu Economaidd) a Phwnc 13 (Cynulliad Cenedlaethol Cymru) o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

8. Cafodd y geiriad o dan bennawd 4 (Datblygu Economaidd) ei ddiwygio gan Orchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Diwygio Atodlen 7 i Ddeddf Llywodraeth Cymru 2006) 2007 (OS 2007/2143) i gynnwys eithriad penodol mewn perthynas â chynlluniau pensiwn personol a galwedigaethol. Cafodd hyn, yn ei dro, ei ddiwygio gan Orchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Diwygio Atodlen 7 i Ddeddf Llywodraeth Cymru 2006) 2010. O ganlyniad, mae'r eithriad i gymhwysedd deddfwriaethol y Cynulliad mewn perthynas â phensiynau yn cynnwys 'eithriad i eithriad' ar gyfer materion y cyfeiriwyd atynt yn y Memorandwm Cydsyniad Deddfwriaethol, ac mae'n darllen fel a ganlyn:

“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. Mae pennawd 13 (Cynulliad Cenedlaethol Cymru) yn cynnwys y cyfeiriad a ganlyn mewn perthynas â phensiynau: “*Cyflogau, lwfansau, pensiynau ac arian rhodd i neu o ran Aelodau Cynulliad, y Prif Weinidog, Gweinidogion Cymru a benodwyd o dan adran 48, y Cwnsler Cyffredinol a Dirprwy Weinidogion Cymru.*” Felly, pan gafodd yr eithriad ar gyfer pensiynau ei gynnwys yng ngorchymyn 2007, roedd yn angenrheidiol cynnwys eithriad i'r eithriad fel nad oedd yn gwrth-ddweud y cymhwysedd a roddwyd o dan bennawd 13. Cafodd yr eithriad i eithriad pellach, ar gyfer aelodau o awdurdodau lleol, ei wneud gan orchymyn 2010.

Y Memorandwm Cydsyniad

10. Mae'r Memorandwm Cydsyniad Deddfwriaethol yn nodi mai cymal 27 yw'r cymal sy'n ymwneud â chymhwysedd deddfwriaethol y Cynulliad. Mae cymal 27 yn nodi'r gofynion yn y Bil a fydd yn gymwys i gynlluniau pensiwn

cyrff cyhoeddus **newydd**, a fyddai'n cynnwys y cynlluniau ar gyfer Aelodau'r Cynulliad, y Prif Weinidog, Gweinidogion Cymru, y Cwnsler Cyffredinol a Dirprwy Weinidogion Cymru ac ar gyfer aelodau o awdurdodau lleol, neu mewn perthynas â hwy.

11. Ceir mater arall mewn perthynas â chymhwysedd. Mae cymal 16 yn ei gwneud yn ofynnol nad oes unrhyw fuddion i gael eu darparu o dan gynllun sydd eisoes yn bodoli a restrir yn Atodlen 5. Mae hyn yn cynnwys: "A scheme constituted by paragraph 6(3) of Schedule 11 to the Welsh Language (Wales) Measure 2011 (nawm 1)". Mae paragraff 6(3) yn darllen fel a ganlyn:

"(3) Caiff Gweinidogion Cymru dalu—.

- (a) pensiynau i bersonau a fu'n aelodau o'r Tribiwnlys, neu mewn cysylltiad â hwy, a*
- (b) symiau ar gyfer darparu pensiynau, neu tuag at ddarparu pensiynau, i bersonau a fu'n aelodau o'r Tribiwnlys, neu mewn cysylltiad â hwy."*

12. Mae cymhwysedd deddfwriaethol y Cynulliad mewn perthynas â'r Gymraeg yn llawer ehangach o dan Atodlen 7 i Ddeddf Llywodraeth Cymru 2006 nag yr oedd o dan Atodlen 5. Barn y Llywodraeth yw bod y darpariaethau pensiwn ym Mesur y Gymraeg yn atodol i'r darpariaethau sy'n sefydlu'r Tribiwnlys, ac mae'n parhau i fod felly yn awr. Fodd bynnag, ni wnaeth yr eithriad ar gyfer 'Cynlluniau pensiwn galwedigaethol a phersonol' ymddangos yn Atodlen 5. Felly mae'n rhaid bod rhywfaint o amheuaeth a yw hyn o fewn cymhwysedd deddfwriaethol y Cynulliad. Mae Llywodraeth Cymru bellach wedi egluro mewn llythyr at Gadeirydd y Pwyllgor ar 31 Hydref pam nad yw wedi cyfeirio at hyn yn y Memorandwm Cydsyniad Deddfwriaethol, a sut y mae'n bwriadu ymdrin â'r materion hyn. Rydym yn cyfeirio at y pwynt hwn yn ein casgliadau.

13. Mae cyfeiriadau penodol eraill at Gymru yn y Bil. Mae cymal 1 yn eithrio rheoliadau cynlluniau a wnaed gan Weinidogion Cymru mewn perthynas â gweithwyr tân ac achub o'r rhai y mae'n ofynnol iddynt gael cysyniad y Trysorlys. Mae gan Weinidogion Cymru y pŵer i wneud cynlluniau mewn perthynas â'r gwasanaethau tân ac achub, ond nid oes gan y Cynulliad Cenedlaethol unrhyw bŵer i wneud deddfwriaeth sylfaenol ar y pwnc gan fod cynlluniau pensiwn personol a galwedigaethol wedi cael eu heithrio o gymhwysedd deddfwriaethol y Cynulliad. Mae cymal 20(5) yn cynnwys gofyniad i ymgynghori â'r Cynulliad Cenedlaethol os cynigir newidiadau penodol i gynlluniau o'r fath. Mae llythyr y Llywodraeth hefyd yn egluro ei barn ar hyn.

14. Ni fydd y Bil hwn yn gwneud unrhyw newidiadau i gymhwysedd deddfwriaethol y Cynulliad Cenedlaethol. Gan hynny, bydd y cymhwysedd i wneud darpariaethau mewn Deddfau Cynulliad, nad ydynt yn cyd-fynd â gofynion y Bil presennol, yn parhau gyda'r Cynulliad.

Materion i'w hystyried

15. Buom yn ystyried y Memorandwm Cydsyniad Deddfwriaethol ar 22 Hydref 2012. Ar ôl hynny, gwnaethom anfon llythyr at y Gweinidog ar 24 Hydref 2012, yn gofyn yn benodol am eglurhad ynghylch goblygiadau'r cynigion ar drefniadau pensiwn aelodau'r Tribiwnlys Cymraeg ac Aelodau'r Cynulliad a Gweinidogion.

16. Ymatebodd y Gweinidogion ar ffurf llythyr ar 31 Hydref 2012, gan nodi y byddai Llywodraeth Cymru yn fodlon ymestyn yr amserlen ar gyfer ystyried y Memorandwm Cydsyniad Deddfwriaethol i alluogi Comisiwn y Cynulliad i'w ystyried mewn perthynas â chynllun pensiwn Aelodau'r Cynulliad.

17. Buom yn trafod y Memorandwm Cysyniad Deddfwriaethol yn ystod ein cyfarfod ar 5 Tachwedd 2012, yn ogystal â llythyr y Gweinidog dyddiedig 31 Hydref. O ganlyniad, gwnaethom ofyn i'r Pwyllgor Busnes am ddyddiad cau adrodd newydd o 3 Ionawr 2013, er mwyn caniatáu i ni ystyried barn Comisiwn y Cynulliad ar y cynigion, a chadarnhawyd y dyddiad cau newydd hwnnw.

18. Ar 28 Tachwedd 2012, ymatebodd y Llywydd i lythyr gan y Gweinidog dyddiedig 7 Tachwedd, yn nodi barn Comisiwn y Cynulliad ar y cynigion. Ystyriodd y Pwyllgor y llythyr ar 3 Rhagfyr.

19. Mae'r ohebiaeth y cyfeirir ati ym mharagraffau 15 i 18 wedi'i chynnwys yn atodiadau 1 i 4 i'r adroddiad hwn.

Casgliad

20. Yn gyffredinol, rydym yn fodlon ar eglurhad y Gweinidog o'r materion a godwyd gennym yn ein llythyr dyddiedig 25 Hydref.

21. Mewn perthynas â phensiynau i aelodau o Dribiwnlys y Gymraeg, o dan Fesur y Gymraeg (Cymru) 2011, nodwn safbwynt Llywodraeth Cymru, sef nad oes angen adfer unrhyw gymhwysedd a oedd eisoes yn bodoli o dan Atodlen 5 i Ddeddf Llywodraeth Cymru 2006, ond sydd yn awr wedi'i eithrio o dan Atodlen 7 i'r Ddeddf honno. Y rheswm dros hyn yw bod y pŵer i wneud darpariaethau 'atodol' o dan adrannau 108(3) i (5) o'r Ddeddf yn parhau i fod ar gael. Mae'r ffaith bod eithriad penodol erbyn hyn yn perthyn i'r 'cynlluniau pensiwn galwedigaethol a phersonol' sy'n effeithio ar gymhwysedd deddfwriaethol y Cynulliad, yn anochel, yn codi'r cwestiwn o ran a yw'r pŵer atodol yn dal i fod yn gymwys pan fydd eithriad penodol i'r gwrthwyneb.

22. Ystyriodd y Pwyllgor y gallai ystyriaeth y Goruchaf Lys o Fil Is-ddeddfau Llywodraeth Leol (Cymru) fod wedi dylanwadu ar y mater o benderfynu a fyddai'n bosibl sefydlu pensiynau ar gyfer aelodau o Dribiwnlys y Gymraeg fel darpariaeth atodol. Yn yr achos hwnnw, nid

yw dyfarniad y Goruchaf Lys, er ei bod yn helpu i ddehongli pa ddarpariaethau allai fod yn atodol, yn mynd i'r afael â'r berthynas rhwng y pŵer i wneud darpariaeth atodol pan fydd eithriad penodol yn ymwneud â'r mater hwnnw.

23. Rydym yn nodi barn Comisiwn y Cynulliad fod gan y Bil Pensiynau'r Gwasanaethau Cymdeithasol, fel y mae wedi'i ddrafftio ar hyn o bryd, botensial i danseilio deddfwriaeth y Cynulliad ac y dylai'r cynllun pensiwn ar gyfer Gweinidogion Cymru ac Aelodau'r Cynulliad gael ei eithrio o'r Bil.

24. Rydym yn nodi o femorandwm esboniadol Llywodraeth y DU fod y Bil yn debygol o fod angen cydsyniad gan Senedd yr Alban a Chynulliad Gogledd Iwerddon. Fodd bynnag, rydym yn deall nad oes cynigion cydsyniad deddfwriaethol cyfatebol wedi'u cyflwyno yn yr awdurdodaethau hyn.

25. Rydym yn credu y dylai Llywodraeth Cymru ystyried yn ofalus farn Comisiwn y Cynulliad ac y gallai'r Llywodraeth gael budd yn sgîl trafodaethau pellach ar y mater pwysig hwn â Llywodraeth y DU a'r gweinyddiaethau datganoledig eraill. Am y rheswm hwnnw, credwn y dylid rhoi ystyriaeth ofalus i ohirio'r ddadl ar y Cynnig Cydsyniad Deddfwriaethol tan y bydd unrhyw drafodaethau o'r fath wedi dod i gasgliad llwyddiannus.

Atodiad 1

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Constitutional and Legislative Affairs Committee

Jane Hutt AM
Minister for Finance and Leader of the
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

24 October 2012

Dear Jane

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

The Constitutional and Legislative Affairs Committee considered the Legislative Consent Memorandum for the Public Service Pensions Bill at its meeting on 22 October 2012.

The Committee noted that the Memorandum made no mention of the provisions in the Bill that refer to the powers of Welsh Ministers in relation to the fire and rescue services, nor to those that affect the pension arrangements of members of the Welsh Language Tribunal.

The latter was of particular concern as the Committee's attention was drawn to the contrast between Schedules 5 and 7 to the Government of Wales Act 2006. Schedule 7 contains a specific exception under 'Economic development' for 'Occupational and personal pension schemes', to which the only carve-outs are for Assembly members, the First Minister, Welsh Ministers, the Counsel General or deputy Welsh Ministers and schemes for or in respect of members of local authorities. These are the schemes referred to in your LCM.

Schedule 5, on the other hand, contained no such exception, so that the Assembly was able to legislate for pensions for members of the Welsh Language Tribunal as a matter incidental to its competence to promote and facilitate the use of the Welsh language.

Section 16 of the Bill, and Schedule 5 to it, appear to have the effect of preventing the Welsh Ministers from making the arrangements approved by the Assembly in paragraph 6 of Schedule 11 to the Welsh Language Measure. The exception that appears in Schedule 7 to the Government of Wales Act 2006 will prevent the Assembly legislating to make alternative arrangements, whether consistently with the Pensions Bill or otherwise.

Furthermore, Matter 12.16 in Schedule 5 to the 2006 Act gave the Assembly legislative competence not merely in relation to members of local authorities, but also of National park authorities and fire and rescue authorities. This competence too appears to have been lost in the transition from Part 3 to Part 4 of the 2006 Act.

Members of the Committee are therefore likely to wish to explore with you

- why these matters were not referred to in the LCM;
- what arrangements are now proposed for the pensions of members of the Welsh Language 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 that competence, and whether the present Bill provides an opportunity to do so.

In addition, the Bill also includes provisions that may affect the Remuneration Board's ability to revise or remake the Assembly Members' pension scheme in future, or at least affect the Board's thinking. As you are aware, the Board is currently consulting on issues and options prior to a full review of Assembly Members' pension arrangements. The Committee may, therefore, also wish to take your mind on the potential impact on the work of the Board and whether the Assembly Commission should have the opportunity to take a view formally on the Memorandum before it is considered in Plenary.

It may be that these are all matters that could be cleared up in correspondence. However, given the relative lack of time for these points to be clarified before the Committee is required to report to the Assembly, it would be helpful if you could attend the Committee's meeting on Monday 5 November 2012 at 2:30pm to discuss the matters set out above. I do not envisage the Committee requiring more than 30 minutes of your time on this occasion.

I would be grateful if your officials could liaise with the Deputy Clerk of the Committee Olga Lewis (tel: 02920 898154) with regards to the practical arrangements.

I look forward to hearing from you.

Yours sincerely



David Melding AM
Chair

Atodiad 2

Jane Hutt AC / AM
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
Cardiff
CF99 1NA

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.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
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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*

Jane Hutt AC / AM
Y Gweinidog Cyllid ac Arweinydd y Ty
Minister for Finance and Leader of the House

Atotiad 3

Jane Hutt AC / AM
Y Gweinidog Cyllid ac Arweinydd y Ty
Minister for Finance and Leader of the House



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF/JH/0415/12

Rosemary Butler AM
Presiding Officer and Commission
Chair,
Assembly Commission
National Assembly for Wales,
Cardiff Bay

7th November 2012

Dear Rosemary,

PUBLIC SERVICE PENSIONS BILL

The Public Service Pensions Bill was introduced into Parliament by the UK Government on 13 September and received its second reading on 29 October.

The majority of public service pension matters in Wales are not devolved. However, the Bill does impact on the Assembly's competence by imposing constraints on the design of future new pension schemes for Assembly Members, Welsh Ministers and members of Welsh local authorities.

A Legislative Consent Motion (LCM) was laid in the Assembly on 2 October in relation to these issues. It was scheduled to be debated in plenary and the Assembly's consent sought on 20 November. As part of the scrutiny process before that debate, the LCM is being considered by the Constitutional and Legislative Affairs Committee (CLAC).

The CLAC Chair wrote to me on 25 October suggesting the Assembly Commission should have an opportunity to provide views on the LCM memorandum before it is debated in plenary. I am happy to agree this approach but would ask that you confirm the Commission does wish to offer its views. A copy of the LCM and memorandum is attached.

In order to provide sufficient time for the Commission to consider matters sufficiently, formulate its views and provide a response, I have arranged to postpone the scheduled plenary debate until 8 January 2013. I hope that this is helpful. If the Commission wish to offer views on the memorandum, I would therefore ask that they are forwarded to me by 7 December 2012, before the Assembly goes into recess.

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Beathsker,
Jane

Jane Hutt AC / AM
Y Gweinidog Cyllid ac Arweinydd y Ty
Minister for Finance and Leader of the House

Atodiad 4

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Jane Hutt AM
Minister for Finance and Leader of the House
Welsh Government
Cardiff Bay
CF99 1NA

Your ref: LF/JH/0415/12
Our ref: PO334/RB/CE

29 November 2012

Dear Jane

Public Service Pensions Bill: Legislative Consent Motion

Thank you for your letter dated 7 November asking for the Commission's view on the Public Service Pensions Bill Legislative Consent Motion. The Bill will put in place a legislative framework making changes to future public sector pension arrangements across the UK, including those within the competence of the National Assembly for Wales. This includes the pension scheme for Welsh Ministers, the Counsel General and Assembly Members.

You will be aware that, since the start of the Fourth Assembly, remuneration arrangements for Members of the National Assembly for Wales are made by an independent statutory Board, set up by the National Assembly for Wales (Remuneration) Wales Measure 2010. The Board is responsible for putting in place a system of pay and allowances which enables Assembly Members to fulfil their roles. Although the Bill does not purport to alter the terms of the present pension schemes within the Assembly's competence, it would, as drafted, impact upon the exercise by the Remuneration Board of its functions under the Government of Wales Act 2006, as amended by the 2010 Measure, by requiring any new schemes to comply with principles set out in the Bill.

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As the pensions arrangements mentioned above are within the competence of the National Assembly for Wales, the Assembly would need to pass its own Bill to enable the Remuneration Board to deviate from the principles set out in the Bill, if they determined that it was appropriate to do so. The Public Service Pensions Bill, as currently drafted, therefore has the potential to undermine the position enshrined in Assembly legislation that decisions on remuneration for Members should be made in a transparent way by an independent body, not by the Assembly itself.

The Remuneration Board is currently consulting on future pension arrangements for Assembly Members and has not reached a view on the likely outcome. The Board has already indicated in its consultation that it will take into consideration changes to public sector pensions when making its decision on future arrangements for Assembly Members.

I have consulted with Commissioners and the Chair of the Remuneration Board and, for the reasons I have set out, the Assembly Commission has come to the view that the pension scheme for the First Minister, Welsh Ministers, the Counsel General, Deputy Welsh Ministers and Assembly Members should be excluded from the Public Service Pensions Bill.

I hope that you will be able to pursue these points with the UK Government.

Rosemary Butler AM, Presiding Officer