

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO. 4)

Small Business, Enterprise and Employment Bill: Amendment to the Employment Rights Act 1996

1. This Legislative Consent Memorandum is laid under Standing Order (SO)29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid and a Legislation Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.

2. The Small Business, Enterprise and Employment Bill (the Bill) was introduced in the House of Commons on 25 June 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department of Business, Innovation and Skills ('BIS'). The main policy objectives of the BIS for the Bill are to open up new opportunities for small businesses to compete, get finance to create jobs, grow, innovate and export.

4. The Bill makes provision about:

- Improved access to finance for businesses and individuals;
- Regulatory provisions relating to business and certain voluntary and community bodies;
- The exercise of procurement functions by certain public authorities;
- The creation of the Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses and their tied pub tenants;
- The regulation of the provision of childcare and provision of information relating to the evaluation of education;
- The regulation of companies;
- Company filing regulations;
- Disqualification from appointments relating to companies and provision about insolvency;
- The law relating to employment and for connected purposes.

Relevant Provisions in the Bill

5. The relevant amendments were tabled by Baroness Neville-Rolfe to the Small Business, Enterprise and Employment Bill on 4 March 2015. The amendments inserted after Clause 147 relate to providing protection for applicants to NHS jobs to prohibit discrimination because of protected disclosure.

6. The amendments to the Small Business, Enterprise and Employment Bill have been tabled with the aim of affording those who have previously made protected disclosures from being discriminated against when later applying for jobs in the NHS.

7. The amendments provide that the Secretary of State may make regulations which prohibit an NHS employer from discriminating against an applicant because it appears to the NHS employer the applicant has made a protected disclosure.

8. The amendments also provide that regulations under this section may make provision about circumstances in which discrimination by an employee or agent of an NHS employer can be treated, for the purposes of the regulations, as discrimination by the NHS employer.

9. They also confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal and make provision for or about the grant or enforcement of specified remedies by a court or tribunal.

10. The clauses also define, for the purpose of these provisions, an NHS employer as a person that provides services for the purposes of the health service in England, Wales or Scotland, and is specified by regulations under this section.

11. The clauses provide that the Secretary of State must consult Welsh Ministers before making regulations prescribing any NHS bodies in Wales for the purposes of the definition of “NHS employer” in the regulations.

12. There is an additional clause which provides that the regulations are to be subject to the affirmative procedure in Parliament.

13. The amendments apply in relation to Wales.

14. The provisions outlined above do not include powers for Welsh Ministers to make subordinate legislation.

15. It is the view of the Welsh Government these provisions fall within the legislative competence of the National Assembly for Wales as they relate to one or more subjects listed under the 'Health and health services' heading in Schedule 7 to the Government of Wales Act 2006: These subjects include: Promotion of health; provision of health services; clinical governance and standards of health care; organisation and funding of national health service.

Whether it is appropriate for the relevant provisions to be made by means of the Bill

16. The Welsh Government will consider whether it wishes to recommend that the Assembly consent to these amendments applying to Wales.

17. It may be appropriate to deal with these provisions in this UK Bill. If the amendments applied to Wales they would afford the same protection to prospective applicants to NHS employers in Wales as those in England and Scotland, and to the same timescale.

Financial implications

18. There are no direct financial implications for the Welsh Government. Any settlement costs, arising out of Employment Tribunals decisions, would be managed within existing Health Board and NHS Trust budgets.

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Minister for Health & Social Services
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