

# **The Welsh Government's Legislative Consent Memoranda on the Employment Rights Bill**

March 2025



# 1. Background

## The Employment Rights Bill

1. The Employment Rights Bill<sup>1</sup> (the Bill) was introduced into the House of Commons on 10 October 2024. It is sponsored by the Department for Business and Trade.

2. The long title to the Bill states that it is a Bill to:

*“... make provision to amend the law relating to employment rights; to make provision about procedure for handling redundancies; to make provision about the treatment of workers involved in the supply of services under certain public contracts; to provide for duties to be imposed on employers in relation to equality; to provide for the establishment of the School Support Staff Negotiating Body and the Adult Social Care Negotiating Body; to amend the Seafarers’ Wages Act 2023; to make provision for the implementation of international agreements relating to maritime employment; to make provision about trade unions, industrial action, employers’ associations and the functions of the Certification Officer; to make provision about the enforcement of legislation relating to the labour market; and for connected purposes.”<sup>2</sup>*

3. The Bill completed its passage through the House of Commons on 12 March 2025. At the time this report was agreed, the Bill was yet to be read for the first time in the House of Lords.

## The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant Bill before the UK Parliament makes provision in relation to Wales that has regard to devolved matters.

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<sup>1</sup> Employment Rights Bill, as introduced

<sup>2</sup> Employment Rights Bill, as introduced

**5.** On 5 December 2024, Jack Sargeant MS, Minister for Culture, Skills and Social Partnership (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.<sup>3</sup>

**6.** The Business Committee agreed that the Legislation, Justice and Constitution Committee, the Economy, Trade and Rural Affairs Committee, and the Equality and Social Justice Committee should report on the Memorandum by 7 March 2025.<sup>4</sup> The deadline for reporting was later extended to 28 March 2025.<sup>5</sup>

### **Provision for which the Senedd's consent is required**

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**7.** The Welsh Government's assessment, as set out in paragraph 8 of the Memorandum, is that consent is required for the following clauses as they appear in the Bill as introduced:

- Clause 25 (Public sector outsourcing: protection of workers);
- Clause 26 (Equality action plans);
- Clause 49 (Deduction of trade union subscriptions from wages in public sector);
- Clause 52 (Facility time: publication requirements and reserve powers);
- Clause 54 (Industrial action ballots: turnout and support thresholds);
- Clause 61 (Repeal of provision about minimum service levels); and
- Clause 71 (Devolved Welsh authorities).

**8.** The Minister states in the Memorandum that the UK Government's view is that the Senedd's consent is required for clause 25; the UK Government believes that consent is not required for the other provisions outlined above.<sup>6</sup>

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<sup>3</sup> Welsh Government, Legislative Consent Memorandum, Employment Rights Bill, 5 December 2024

<sup>4</sup> Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Employment Rights Bill, 10 December 2024

<sup>5</sup> Business Committee, Revised timetable for consideration: Legislative Consent Memorandum on the Employment Rights Bill, February 2025

<sup>6</sup> Memorandum, paragraph 13

## The Welsh Government's position

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**9.** At paragraph 14 of the Memorandum, the Minister outlines the Welsh Government's position on the inclusion of provisions for Wales in the Bill:

*"The Welsh Government supports the Employment Rights Bill. The provisions in the Employment Rights Bill are consistent with the Welsh Government's focus on promoting and encouraging fair work. The Employment Rights Bill provides a valuable and necessary opportunity to strengthen employment rights across Great Britain, including for workers in devolved public services in Wales."*

**10.** The Minister adds:

*"In my view it is appropriate to deal with these provisions in this UK Bill. The legislation is consistent with the Welsh Government's focus on fair work and provides an opportunity to strengthen employment rights for workers in Wales. Therefore, I recommend that the Senedd supports the proposals and gives its consent."*<sup>7</sup>

## The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

**11.** The Minister laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) on 19 December 2024 in respect of amendments made to the Bill at Commons Committee Stage.<sup>8</sup>

**12.** The Business Committee agreed that the Legislation, Justice and Constitution Committee, the Economy, Trade and Rural Affairs Committee, and the Equality and Social Justice Committee should report on the Memorandum and Memorandum No. 2 by 7 March 2025.<sup>9</sup> The deadline for reporting was later extended to 28 March 2025.<sup>10</sup>

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<sup>7</sup> Memorandum, paragraph 16

<sup>8</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), 10 January 2025

<sup>9</sup> Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Employment Rights Bill, January 2025

<sup>10</sup> Business Committee, Revised timetable for consideration: Legislative Consent Memorandum on the Employment Rights Bill, February 2025

## Provision for which the Senedd's consent is required

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**13.** In Memorandum No. 2, the Minister states that amendments 59 to 64 tabled by the UK Government during Commons Committee Stage replace clause 25 with re-worked provisions on the same subject-matter (protection of workers from detrimental treatment as a result of outsourcing).<sup>11</sup>

**14.** The Minister states:

*"These amendments would restructure the new provisions to be inserted into the Procurement Act 2023 so that the powers previously vested only in the Secretary of State would now also be conferred on the Scottish Ministers and Welsh Ministers in respect of devolved Scottish and Welsh authorities respectively. The amendment also clarifies that the duty to publish a code of practice does not depend on the making of the regulations.*

*The practical effect in relation to Wales is to give powers to Welsh Ministers to make provisions in regulations to ensure that workers transferred to a contractor and workers who already work for that contractor are treated equally and publish a code of practice on related matters. These new provisions will apply to those organisations defined as devolved Welsh authorities in the Procurement Act 2023 but not listed in Schedule 1 to the SPPP Act [the Social Partnership and Public Procurement (Wales) Act 2023]."*<sup>12</sup>

**15.** The Minister confirms that he considers that the Senedd's consent is required in relation to this clause, as amended by these government amendments, in so far as it makes provision with regard to devolved matters.<sup>13</sup>

## The Welsh Government's position

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**16.** At paragraphs 13 to 15 of Memorandum No. 2, the Minister explains the background to the amendments tabled by the UK Government. He states that the Welsh Government wrote to the UK Government to confirm that although the Welsh Government welcomed the inclusion of clause 25 in the Bill, a similar code of practice has been in place in Wales as guidance since 2014 and that the *Social Partnership and Public Procurement (Wales) Act 2023* places a duty on Welsh

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<sup>11</sup> Memorandum No. 2, paragraph 19

<sup>12</sup> Memorandum No. 2, paragraph 19

<sup>13</sup> Memorandum No. 2, paragraph 19

Ministers to prepare and publish a code of practice about employment and pension matters related to outsourcing services contracts.

**17.** The Minister further notes:

*"I indicated a potential inconsistency given that the duty in the Social Partnership and Public Procurement (Wales) Act applies only to those bodies listed in Schedule 1 of that Act and does not cover several bodies defined as devolved Welsh authorities in the Procurement Act 2023. Clause 25 of the Employment Rights Bill, as originally drafted, would also exclude those devolved Welsh authorities not listed in Schedule 1.*

*To ensure a consistent approach and avoid the creation of a potentially anomalous position, I requested the UK Government consider an amendment to clause 25 of the Employment Rights Bill to give Welsh Ministers powers equivalent to those of the Secretary of State to make provision in regulations, and publish a code of practice, to apply to those 4 organisations defined as devolved Welsh authorities in the Procurement Act 2023 but not listed in Schedule 1 to the SPPP Act."*<sup>14</sup>

**18.** The Minister states that, in response, the UK Government confirmed that it would seek to amend the Bill as requested by the Welsh Government during Commons Committee stage. The UK Government subsequently tabled amendments to clause 25 of the Bill during Commons Committee stage (as referred to above).

**19.** In terms of the amendments requiring the consent of the Senedd, the Minister states:

*"Consent is required for these provisions because they contain provision for a purpose within the legislative competence of the Senedd and therefore have regard to devolved matters. They also confer executive powers on the Welsh Ministers which invariably affect devolved matters."*<sup>15</sup>

**20.** The Minister states that the UK Government has not stated its view on the need for consent in relation to the amendments to clause 25.

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<sup>14</sup> Memorandum No. 2, paragraphs 16 and 17

<sup>15</sup> Memorandum No. 2, paragraph 20

## 2. Committee consideration

- 21.** We considered the Memorandum and Memorandum No. 2 at our meeting on 27 January 2025.<sup>16</sup>
- 22.** We subsequently wrote to the Minister on 31 January 2025 to request clarity on matters raised in those memoranda.<sup>17</sup> The Minister responded to our letter on 7 February 2025.<sup>18</sup>
- 23.** We also wrote to the Senedd Commission on 31 January 2025 to seek further information.<sup>19</sup> The Senedd Commission wrote to us in response on 13 February 2025.<sup>20</sup>
- 24.** The Economy, Trade and Rural Affairs Committee also wrote to us in respect of the memoranda on 13 February 2025.<sup>21</sup>
- 25.** We considered these items of correspondence on 17 February 2025.<sup>22</sup>
- 26.** We agreed our report on 17 March 2025.<sup>23</sup>

### Our view

- 27.** We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum and Memorandum No. 2.
- 28.** We also note the position of the UK Government as regards consent.

**Conclusion 1.** We agree with the Welsh Government's assessment that clauses 25, 26 and 61 of the Bill as introduced (clauses 27, 28 and 65 of the Bill as amended at Public Bill Committee<sup>24</sup>) require the consent of the Senedd in accordance with Standing Order 29.

- 29.** It is however unclear to us – based on the information provided in the memoranda – why the Welsh Government believes that consent is required for

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<sup>16</sup> Legislation, Justice and Constitution Committee, 27 January 2025

<sup>17</sup> Letter to the Minister for Culture, Skills and Social Partnership, 31 January 2025

<sup>18</sup> Letter from the Minister for Culture, Skills and Social Partnership, 7 February 2025

<sup>19</sup> Letter to the Senedd Commission, 31 January 2025

<sup>20</sup> Letter from the Senedd Commission, 13 February 2025

<sup>21</sup> Letter from the Economy, Trade and Rural Affairs Committee, 13 February 2025

<sup>22</sup> Legislation, Justice and Constitution Committee, 17 February 2025

<sup>23</sup> Legislation, Justice and Constitution Committee, 17 March 2025

<sup>24</sup> Employment Rights Bill, as amended in Public Bill Committee

clauses 49, 52, 54 and 71 of the Bill as introduced (clauses 53, 56, 58 and 76 of the version as amended at Public Bill Committee). Clauses 49, 52 and 54 remove or amend various provisions of the *Trade Union and Labour Relations (Consolidation) Act 1992* (the 1992 Act), as amended by the *Trade Union Act 2016*; provisions which have been disapplied as regards devolved Welsh authorities by the *Trade Union (Wales) Act 2017* (the 2017 Act). Clause 71 accordingly repeals section 1 of the 2017 Act given it will become redundant and no longer have legal effect.

**30.** Given that the subject matter of the 1992 Act is now expressly reserved under paragraph 141(d) of Schedule 7A to the *Government of Wales Act 2006*<sup>25</sup>, it is unclear to us how these clauses have regard to devolved matters, in accordance with Standing Order 29.

**31.** When asked to provide further clarity on this matter, the Minister stated in respect of clauses 49, 52 and 54:

*"Consent is required for these provisions because they contain provision for a purpose within the legislative competence of the Senedd and therefore have regard to devolved matters. They also confer executive powers on the Welsh Ministers which invariably affect devolved matters."*<sup>26</sup>

**32.** The Minister's response does not make reference to clause 71.

**33.** While we acknowledge the Minister's response, we do not believe it provides sufficient clarity on the Welsh Government's reasons for why – in its view – the Senedd's consent is required for clauses 49, 52, 54 and 71 of the Bill. We therefore believe that the Minister should seek to provide a fuller explanation for why the Welsh Government has reached its view.

**Recommendation 1.** The Welsh Government should provide further information outlining why the consent of the Senedd is required for clauses 49, 52, 54 and 71 of the Bill as introduced (clauses 53, 56, 58 and 76 of the version as amended at Public Bill Committee).

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### **Clause 25 (Public sector outsourcing: protection of workers)**

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**34.** Clause 25 of the Bill as introduced (clause 27 in the version of the Bill as amended at Public Bill Committee) inserts a new section 83C into the

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<sup>25</sup> Available at: [www.legislation.gov.uk/ukpga/2006/32/schedule/7A](http://www.legislation.gov.uk/ukpga/2006/32/schedule/7A)

<sup>26</sup> Memorandum No. 2, paragraph 20



*Procurement Act 2023* (the 2023 Act), which includes a regulation-making power for the Welsh Ministers in relation to public sector outsourcing contracts.

**35.** The memoranda do not set out the Senedd procedure that regulations made under this power are to be subject, as is required by Standing Order 29.3(iv). We therefore asked the Minister to confirm the procedure in writing. In response, he told us that regulations made by the Welsh Ministers under the new section 83C of the 2023 Act will be subject to the affirmative procedure.<sup>27</sup>

### **Clause 26 (Equality action plans)**

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**36.** Clause 26 of the Bill as introduced (clause 28 in the version of the Bill as amended at Public Bill Committee) inserts a new section 78A into the *Equality Act 2010* (the 2010 Act) to enable a UK Government Minister to make regulations requiring employers to develop an equality action plan. Such regulations will apply to the Senedd Commission, by virtue of its inclusion in Part 1 of Schedule 19 to the 2010 Act.

**37.** We asked the Minister to explain why it is considered appropriate for the Senedd Commission to be included within the scope of this clause, while all other devolved Welsh authorities are excluded. In response, he told us:

*"The Senedd Commission's inclusion in the scope of clause 26 results from its listing in Part 1 of Schedule 19 to the Equality Act 2010 (under the heading of "Parliamentary and Devolved Bodies"). The Scottish Parliamentary Corporate Body is similarly within scope. For the purposes of the 2010 Act and connected legislation, these parliamentary bodies are distinct from other devolved Welsh and Scottish public authorities."*<sup>28</sup>

**38.** We also asked the Minister to explain why the clause does not include a requirement for a Minister of the Crown to consult the Welsh Ministers when making regulations that apply to the Senedd Commission. The Minister told us in response:

*"The requirement that a Minister of the Crown consult the Welsh Ministers before making regulations under the new section 78A applies only where the regulations apply to a body listed in Part 4 of Schedule 19 to the 2010 Act. The requirement*

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<sup>27</sup> Letter from the Minister for Culture, Skills and Social Partnership, 7 February 2025

<sup>28</sup> Letter from the Minister for Culture, Skills and Social Partnership, 7 February 2025

*to consult does not apply in respect of regulations that apply to the Senedd Commission because it is listed in Part 1 of the Schedule, not Part 4.”<sup>29</sup>*

**39.** We sought information from the Senedd Commission on any engagement it had received with the UK Government or the Welsh Government in relation to clause 26, and any views it had on the inclusion of this clause in the Bill. On behalf of the Senedd Commission, the Llywydd, the Rt Hon Elin Jones MS, told us that the Commission had not been consulted, or received any engagement with the UK Government in respect of this provision.<sup>30</sup> She also stated:

*“Due to the limited nature of the information available, we are unclear as to what any future regulations would contain. We would therefore like to see the Bill amended so that the Commission is included as a statutory consultee to allow us the opportunity to comment on any proposals for any subsequent regulations.”<sup>31</sup>*

**40.** The Economy, Trade and Rural Affairs Committee wrote to us to raise its concerns about this clause, stating:

*“We feel it is entirely inappropriate for the UK Government to take powers that allows it to impose requirements on the Senedd Commission on how it operates, particularly in light of the fact that such requirements will not apply to other devolved Welsh authorities. In our opinion, the Senedd Commission should be answerable and accountable to the Senedd not to UK Government Ministers.”<sup>32</sup>*

**41.** We note the Minister's comments in relation to why the Senedd Commission is included in the scope of clause 26, and why it does not include a requirement for a Minister of the Crown to consult the Welsh Ministers when making regulations that apply to the Senedd Commission.

**42.** We do not however consider that it is appropriate for the Senedd Commission to be included within the scope of clause 26. We consider that the Senedd Commission should be accountable to the Senedd and not to UK

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<sup>29</sup> Letter from the Minister for Culture, Skills and Social Partnership, 7 February 2025

<sup>30</sup> Letter from the Senedd Commission, 13 February 2025

<sup>31</sup> Letter from the Senedd Commission, 13 February 2025

<sup>32</sup> Letter from the Economy, Trade and Rural Affairs Committee, 13 February 2025

Government Ministers, and as such we do not believe it is appropriate for the UK Government to be able to impose duties on the Senedd Commission in this way.

**43.** We therefore believe that the Minister should make representations to the UK Government to seek to remove the Senedd Commission from the scope of clause 26.

**Recommendation 2.** The Welsh Government should make representations to the UK Government to seek the Bill's amendment for the purposes of removing the Senedd Commission from the scope of clause 26 of the Bill as introduced (clause 28 in the version of the Bill as amended at Public Bill Committee).