

Report on the Legislative Consent Memorandum for the Employment Rights Bill

March 2025

1. Background

1. The Employment Rights Bill (the Bill) was introduced in the House of Commons on 10 October 2024.

2. The long title of 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 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.”



3. Standing Order 29.1 provides that the Welsh Ministers must lay a Legislative Consent Memorandum where a UK Bill makes provision in relation to Wales that has regard to devolved matters.
4. Jack Sargeant MS, Minister for Culture, Skills and Social Partnership (“the Minister”), laid a Legislative Consent Memorandum (the LCM) in respect of the Bill on 5 December 2024.¹
5. On 10 December 2024, the Business Committee referred the LCM to the Economy, Trade and Rural Affairs Committee (“the Committee”), the Legislation, Justice and Constitution Committee, and the Equality and Social Justice Committee for consideration, with a reporting deadline of 7 March 2025.²
6. On 19 December 2024, the Minister laid a Supplementary Legislative Consent Memorandum (“the SLCM”).³ The Business Committee referred the SLCM to the Committee, the Legislation, Justice and Constitution Committee, and the Equality and Social Justice Committee, with a reporting deadline of 7 March 2025.⁴
7. On 18 February 2025, the Business Committee agreed a new reporting deadline for the Committees to report on the memoranda relating to the Bill, of 28 March 2025.⁵

2. The LCM

8. Paragraphs 4 to 11 of the LCM summarise the Bill and its policy objectives.

Provisions for which consent is sought

9. Paragraph 12 of the LCM sets out the Welsh Government’s view as to which clauses within the Bill require the consent of the Senedd, namely clauses 25, 26, 49, 52, 54, 61 and 71. Paragraph 13 notes that the UK Government’s view is that the Senedd’s consent is only required for clause 25.

¹ Welsh Government, [Legislative Consent Memorandum – The Employment Rights Bill](#), December 2024

² Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Employment Rights Bill](#), December 2024

³ Welsh Government, [Supplementary Legislative Consent Memorandum \(No.2\) – The Employment Rights Bill](#), December 2024

⁴ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No.2\) on the Employment Rights Bill](#), January 2025

⁵ Business Committee, [Revised timetable for consideration: Legislative Consent Memorandum on the Employment Rights Bill](#), February 2025

10. A summary of the clauses listed above is set out below:

Clause 25

11. Clause 25 amends the Procurement Act 2023 (“PA 2023”) in relation to the protection of transferring workers in outsourcing contracts. The LCM and the Explanatory Notes to the Bill state that the purpose of this clause is to create a power for a Minister of the Crown to make regulations and to impose a duty to publish a statutory code of practice. These powers are intended to be used to set out measures to avoid the emergence of a workforce consisting of ex-public sector employees and private sector employees, with each group on different terms and conditions, commonly known as a “two-tier workforce”.

12. The Bill excludes devolved Welsh authorities from the ambit of the new section, (save where they are engaging in reserved procurement arrangements and any “devolved Welsh procurement arrangement”). Related provisions of the PA 2023 were subject to a Legislative Consent Motion.⁶

Clause 26

13. Clause 26 inserts a new section 78A into the Equality Act 2010 which enables the making of regulations requiring certain employers and public bodies to prepare and publish an “equality action plan” dealing with matters of gender equality. Most devolved Welsh public bodies are excluded, but the Senedd Commission (under its previous name of the National Assembly for Wales Commission) is covered by this provision.

14. Clause 26 also allows regulations made under it to apply to the Environment Agency, NHS Blood and Transplant, NHS Business Services Authority and the Student Loans Company Limited. Although these bodies are not devolved Welsh authorities, clause 26 states that a Minister of the Crown must consult the Welsh Ministers before making regulations that apply to these bodies under this provision. There is no similar requirement to consult the Welsh Ministers when making regulations that apply to the Senedd Commission.

Clauses 49, 52, 54 and 71

15. Clauses 49, 52 and 54 remove or amend various provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), which deal with deductions from wages by relevant public sector employers for trade union

⁶ Senedd Cymru, [Legislative consent: Procurement Bill](#)

subscriptions; the making of regulations by a Minister of the Crown requiring some public sector employers to publish information relating to time off for trade union duties and activities; and the majority required for voting in a ballot regarding industrial action. The purpose of the amendment to the 1992 Act is to negate amendments that were previously made to the 1992 Act by the Trade Union Act 2016 (“the 2016 Act”).

16. All of the provisions that are affected by clauses 49, 52 and 54 have previously been disapplied in Wales in relation to devolved Welsh authorities under the Trade Union (Wales) Act 2017 (“the 2017 Act”). Clause 71 repeals section 1 of the 2017 Act, which disapplied some of the changes made to the 1992 Act by the 2016 Act. As these changes are now being repealed by this Bill, section 1 of the 2017 Act is no longer required.

Clause 61

17. Clause 61 of the Bill repeals the Strikes (Minimum Service Levels) Act 2023 (“the 2023 Act”), undoing the changes made by that Act to the 1992 Act. The Welsh Government was of the view that a legislative consent memorandum was needed in relation to the making of the 2023 Act.⁷ The UK Government did not agree with this view.

18. In March 2023, the Committee laid a report on the Legislative Consent Memorandum for the 2023 Act. The report concluded that:

“A majority of the Committee recommend the Senedd does not give consent to this Bill.”⁸

Reasons for making these provisions for Wales in the Bill

19. Paragraph 14 notes the Welsh Government’s support for the Bill. It notes:

“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

⁷ Senedd Cymru, [Legislative consent: Strikes \(Minimum Service Levels\) Bill](#).

⁸ Economy, Trade and Rural Affairs Committee, [Report on the Strikes \(Minimum Service Levels\) Bill Legislative Consent Memorandum](#), March 2023

opportunity to strengthen employment rights across Great Britain, including for workers in devolved public services in Wales.”⁹

Financial implications

20. The LCM notes that there are “negligible financial implications in relation to the provisions in the Bill for which consent is required”. Paragraph 15 sets out the Welsh Government’s reasoning behind this statement.

Welsh Government’s position on consent

21. The LCM concludes with the Minister’s view that it is appropriate to deal with these provisions in the 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.”¹⁰

3. The SLCM

22. Paragraphs 13 to 18 of the SLCM provide an update on the Welsh Government’s position since the publication of the LCM, specifically that a request had been made to the UK Government for amendments to clause 25 of the Bill, which had subsequently been accepted.

23. The SLCM states that the effect of these amendments will be to restructure the new provisions to be inserted into the Procurement Act 2023 (“PA 2023”) so that the powers previously vested only in the Secretary of State would now also be conferred on the Welsh Ministers in respect of devolved Welsh authorities. The amendments also clarify that the duty to publish a code of practice does not depend on the making of the regulations.

24. The SLCM goes on to state that the practical effect of the amendments in relation to Wales is to give powers to the Welsh Ministers to make provisions in regulations to ensure that workers transferred to a contractor and workers who

⁹ Welsh Government, Legislative Consent Memorandum – The Employment Rights Bill, December 2024, paragraph 14

¹⁰ Welsh Government, Legislative Consent Memorandum – The Employment Rights Bill, December 2024, paragraph 16

already work for that contractor are treated equally, and to publish a code of practice on related matters. These new provisions will apply to those organisations defined as devolved Welsh authorities in the PA 2023 but not listed in Schedule 1 to the Social Partnership and Public Procurement (Wales) Act 2023.

25. The SLCM concludes:

“The amendments to the Bill have been made at my request to facilitate greater consistency in this area of legislation. Therefore, I recommend that the Senedd supports the proposals and gives its consent.”¹¹

4. Committee consideration

26. The Committee considered the LCM and the SLCM at its meeting on 5 February 2025.¹² During its considerations Members discussed concerns regarding Clause 26 of the Bill. Whilst the committee would normally focus on the policy aspects of the Bill and this is a constitutional issue, Members felt it was of such importance they should explore the issue in this report.

27. As noted above Clause 26 enables the making of regulations requiring certain employers and public bodies to prepare and publish an “equality action plan” dealing with matters of gender equality. The Senedd Commission is included in the list of public bodies this Clause applies to. Members found this Clause particularly unusual as such requirements will apply to the Commission but not apply to other devolved Welsh authorities.

28. Whilst Members do not have concerns around the Commission publishing an equality action plan, the Committee is concerned that the Commission should be accountable to the Senedd for these plans not UK Ministers should they make regulations as envisaged by this Bill. Ultimately Members are concerned that this clause could undermine the accountability of the Senedd Commission to the Senedd on an important matter.

29. This LCM has been referred to the Legislation, Justice and Constitution Committee (LJC) and the Equality and Social Justice Committee as well as this Committee. The LJC Committee has written to the Welsh Government to raise

¹¹ Welsh Government, Supplementary Legislative Consent Memorandum (No 2) – The Employment Rights Bill, December 2024, paragraph 25

¹² Economy, Trade and Rural Affairs Committee, 5 February 2025

specific questions on the LCM including questions regarding Clause 26. Specifically their letter asked:

As you state in the legislative consent memorandum in respect of clause 26, the Senedd Commission is within the scope of this provision. Could you please provide further information as to why it is appropriate that the Senedd Commission is within its scope, while most devolved Welsh public bodies are excluded?

Clause 26 also provides that a Minister of the Crown must consult the Welsh Ministers before making regulations that apply to a number of bodies under this provision; however there is no similar requirement to consult the Welsh Ministers when making regulations that apply to the Senedd Commission. Could you please explain why this is the case.”¹³

30. The Welsh Government responded to these questions as follows:

“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.

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 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.”¹⁴

31. The LJC Committee has also separately written to the Llywydd, in her capacity as Chair of the Senedd Commission, to seek the Commission’s views on the inclusion of clause 26, and details of any engagement which may have

¹³ Letter from the Chair of the Legislation, Justice and Constitution Committee to the Minister for Culture, Skills and Social Partnership, 31 January 2025.

¹⁴ Letter from the Minister for Culture, Skills and Social Partnership to the Chair of the Legislation, Justice and Constitution Committee, 7 February 2025.

occurred with the UK Government or Welsh Government¹⁵. In response, the Llywydd confirmed:

“we have not been consulted or had any engagement with the UK Government in relation to this provision. 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.”¹⁶

Our view

The Committee holds deep concerns around Clause 26 of the Bill. Whilst the Committee recognises there are constitutional issues around the interactions between the Commission, Welsh and UK Ministers, Members feel it is entirely inappropriate for the UK Government to take powers that allows it to impose requirements on the Senedd Commission around how it operates beyond reserved matters, including standard legislation that applies to all employers. Members feel this is particularly relevant in light of the fact that such requirements will not apply to other devolved Welsh authorities. The Committee believes, subject to the caveats relating to reserved matters, the Senedd Commission should be answerable and accountable to the Senedd not to UK Government Ministers. The Committee is so concerned by this, that it wrote to the LJC Committee specifically to raise its views on Clause 26¹⁷.

Considering the importance of the policy matter, particularly around trade union/industrial relations elements of the LCM, the Committee feels it did not have enough time to fully consider the issues and take enough evidence to come to a settled position. As a result the Committee will not be making a recommendation as to whether the Senedd should grant consent.

Conclusion 1. The Committee is concerned about the implications of Clause 26 of the Bill and feels that it is inappropriate for UK Ministers to have the ability to impose requirements on the Senedd Commission in this way. Members feel that,

¹⁵ [Letter from the Chair of the Legislation, Justice and Constitution Committee to the Llywydd, 31 January 2025](#)

¹⁶ [Letter from the Llywydd and Chair of the Senedd Commission to the Chair of the Legislation, Justice and Constitution Committee, 13 February 2025](#)

¹⁷ [Letter from the Chair of the Economy, Trade and Rural Affairs Committee to the Chair of the Legislation, Justice and Constitution Committee, 13 February 2025](#)

subject to any reserved matters, the Commission should ultimately be answerable to the Senedd on matters of equalities and Clause 26 has the potential to undermine this.

Conclusion 2. The Committee has not come to a settled position on the policy content of the LCM so will not be offering a recommendation regarding consent.