

Report on the Legislative Consent Memoranda on the Employment Rights Bill

March 2025

1. Background

1. This report considers the Welsh Government's Legislative Consent Memorandum ¹(the LCM) and the Supplementary Legislative Consent Memorandum ²(the SLCM) on the Employment Rights Bill.³
2. The Employment Rights Bill ("the Bill") was introduced in the House of Commons on 10 October 2024 and had its Second Reading on 21 October 2024. It has now passed Committee Stage in the House of Commons and report stage began on 11 March 2025.
3. The long title of the Bill states that its purpose is 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

¹ Welsh Government, Legislative Consent Memorandum, Employment Rights Bill, 5 December 2024

² Welsh Government, Supplementary Consent Memorandum (No.2), Employment Rights Bill, 19 December 2024

³ UK Parliament, Employment Rights Bill



the Certification Officer; to make provision about the enforcement of legislation relating to the labour market; and for connected purposes”.

The Minister for Culture, Skills and Social Partnership, Jack Sargeant MS (the Minister), laid the LCM and SLCM in respect of the Bill on 5 December and 19 December 2024, respectively.

- 4.** The Business Committee referred both to this Committee, the Economy, Trade and Rural Affairs Committee and Legislation, Justice and Constitution Committee with a revised reporting deadline of 28 March 2025.
- 5.** All references to clause numbers in this report are to the clause numbers of the Bill as introduced.

2. The Legislative Consent Memorandum

- 6.** Paragraphs 4 to 10 of the LCM summarise the Bill and outline its policy objectives. Paragraphs 11 and 12 of the LCM set out the Welsh Government’s assessment of the provisions in the Bill for which consent is required. These provisions relate to the protection of transferring workers in outsourcing contracts; equality action plans; and trade union legislation.

3. The Supplementary Legislative Consent Memorandum

- 7.** The SLCM focuses on clause 25 of the Bill, as introduced. 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”. 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”).

8. The SLCM states that the Minister wrote to the Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets, on 29 October 2024. Whilst welcoming the inclusion of clause 25 of the Employment Rights Bill, the Welsh Government noted potential inconsistencies with the “Two-tier Code” in Wales and the Social Partnership and Public Procurement (Wales) Act 2023 (“the SPPP Act”) and requested an amendment to clause 25 of the 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 organisations defined as devolved Welsh authorities in the PA 2023 but not listed in Schedule 1 to the SPPP Act.

9. The Parliamentary Under-Secretary of State replied on 29 November to confirm that the UK Government would seek to amend the Bill as requested during the Commons Committee stage. The resulting amendments to clause 25 have now been included in the Bill.

4. Provisions for which consent is sought

10. Annex A to the Explanatory Notes to the Bill indicates that the UK Government considers that the legislative consent of the Senedd is only required for clause 25 of the Bill. Both the LCM and the SLCM address this clause.

11. The Welsh Government agrees with this assessment, but in the LCM it states that it also considers that consent is required for clauses 26, 49, 52, 54, 61 and 71. The LCM states that the view of the UK Government is that the Senedd’s consent is not required for these clauses.

Clause 25

12. Clause 25 amends the PA 2023 in relation to the protection of transferring workers in outsourcing contracts. Amendments have been tabled to this clause to address the inconsistency raised by Welsh Government, as referred to in paragraph 7 above. The SLCM states that the effect of these amendments will be to restructure the new provisions to be inserted into the 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.

13. 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 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 SPPP(W)A 2023.

Clause 26

14. 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.

15. 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, 61 and 71

16. The Committee considered that the Economy, Trade and Rural Affairs Committee would be better placed to consider clauses 49, 52, 54, 61 and 71 given their remit and therefore focused on clauses 25 and 26.

5. Engagement by Senedd Committees

17. The Legislation, Justice and Constitution Committee wrote to the Welsh Government on 31 January 2025 seeking further information and clarification in relation to clauses 26, 49, 52, 54 and 71.⁴

18. The Welsh Government’s response on 7 February clarified that the Senedd Commission’s inclusion in the scope of clause 26 results from its listing in Part 1 of

⁴ Equality and Social Justice Committee, PTN 4.3 ~~Correspondence from the Legislation, Justice and the Constitution Committee~~ to the Minister for Culture, Skills and Social Partnership regarding legislative consent memoranda on the Employment Rights Bill

Schedule 19 to the Equality Act 2010 (under the heading of “Parliamentary and Devolved Bodies”).⁵

19. It also clarified that clauses 49, 52 and 54 have regard to devolved matters in accordance with Standing Order 29.

20. The Legislation, Justice and Constitution Committee wrote to the Senedd Commission on 31 January regarding clause 26.⁶

21. The Senedd Commission’s response on 13 February confirmed that they had not been consulted or had any engagement with the UK Government in relation to this provision and would therefore like to see the Bill amended so that the Commission is included as a statutory consultee to allow the opportunity to comment on any proposals for any subsequent regulations.⁷

22. The Economy, Trade and Rural Affairs Committee wrote to the Legislation, Justice and Constitution Committee regarding concern that the Senedd Commission is within the scope of the Bill. It notes that while Clause 26 states that a Minister of the Crown must consult the Welsh Ministers before making regulations that apply to certain non-devolved public bodies operating in Wales, there is no such requirement when making regulations that apply to the Senedd Commission.⁸

6. Our view

On whether legislative consent is required

We agree with the Welsh Government and the UK Government that **consent is required** for clause 25.

Furthermore, we agree with the Welsh Government that **consent is required** in respect of clause 26.

⁵ Equality and Social Justice Committee PTN 4.4 Correspondence from the Minister for Culture, Skills and Social Partnership to the Legislation, Justice and the Constitution Committee regarding the Employment Rights Bill

⁶ Equality and Social Justice Committee PTN 4.3 Correspondence from the Legislation, Justice and Constitution Committee to the Senedd Commission

⁷ Equality and Social Justice Committee PTN 4.3 Correspondence from the Llywydd to the Legislation, Justice and Constitution Committee

⁸ Equality and Social Justice Committee PTN 4.5 Correspondence from the Economy, Trade and Rural Affairs Committee to the Legislation, Justice and Constitution Committee

We did not consider clauses 49, 52, 54, 61 and 71 in enough detail to reach a conclusion, and considered the Economy, Trade and Rural Affairs Committee would be better placed to comment on these given their remit.

On whether the Senedd should grant legislative consent

Clause 25

The Committee notes the amendments made to clause 25 of the Bill to give Welsh Ministers powers equivalent to those of the Secretary of State as requested by the Welsh Government. It therefore has no objection to granting legislative consent in relation to this clause. .

Conclusion 1. The Committee is satisfied with amendments made to clause 25 of the Bill and has no objection to granting legislative consent in relation to this clause.

Clause 26

The Committee notes the views of the Senedd Commission as outlined in correspondence and thinks that these matters should be clarified before it is possible to reach a view on whether consent should be given.⁹

Recommendation 1. The Committee recommends that the Welsh Government seeks clarity from the UK Government in relation to clause 26 and the points raised by the Llywydd on behalf of the Senedd Commission and informs Members of the outcome before the Senedd is asked to consider the Legislative Consent Motion in Plenary.

⁹ Equality and Social Justice Committee PTN 4.3 [Correspondence from the Llywydd to the Legislation, Justice and Constitution Committee](#)