

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Employment Rights Bill

June 2025



1. Background

1. The Employment Rights Bill¹ (the Bill) was introduced in 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 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."*²

3. The Bill completed its passage through the Commons on 12 March 2025. It subsequently received its First and Second Reading in the House of Lords³, and entered Lords Committee Stage on 29 April 2025.

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

4. Standing Orders 29.1 and 29.2 provide 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 (relevant provision).

5. In December 2024, Jack Sargeant MS, Minister for Culture, Skills and Social Partnership, laid before the Senedd a legislative consent memorandum⁴ (the

¹ ~~Employment Rights Bill~~, as introduced

² ~~Employment Rights Bill~~, as introduced

³ ~~Employment Rights Bill~~, as brought from the Commons

⁴ Welsh Government, ~~Legislative Consent Memorandum: The Employment Rights Bill~~, 5 December 2024

Memorandum) and a supplementary legislative consent memorandum⁵ (Memorandum No. 2) in respect of the Bill. In both memoranda, the Minister concludes that it is appropriate to deal with the relevant provision in the Bill, and that the “legislation is consistent with the Welsh Government’s focus on fair work.”⁶

6. We reported on these memoranda on 26 March 2025.⁷

7. Within our report, we partly agreed with the Welsh Government’s assessment of the clauses of the Bill which require the Senedd’s consent⁸, and in this respect we recommended that the Welsh Government should provide further information outlining why consent is required for clauses 49, 52, 54 and 71 of the Bill as introduced⁹ (clauses 60, 63, 65 and 86 of the version of the Bill as brought from the Commons).

8. We also stated that we did not consider it appropriate for the Senedd Commission to be included within the scope of clause 26 of the Bill as introduced¹⁰ (clause 31 in the version of the Bill as brought from the Commons), and recommended that 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 its scope¹¹.

9. The Minister responded to our report in April 2025.¹²

10. In its response, the Welsh Government states that it is of the view that consent is required for clauses 49, 52 and 54 of the Bill as introduced, on the basis

⁵ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2): The Employment Rights Bill, 19 December 2024

⁶ Welsh Government, Legislative Consent Memorandum: The Employment Rights Bill, 5 December 2024, paragraph 16; Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2): The Employment Rights Bill, 19 December 2024, paragraph 25

⁷ Legislation, Justice and Constitution (LJC) Committee, The Welsh Government’s Legislative Consent Memoranda on the Employment Rights Bill, March 2025

⁸ LJC Committee, The Welsh Government’s Legislative Consent Memoranda on the Employment Rights Bill, March 2025, Conclusion 1 and paragraphs 29 to 33

⁹ LJC Committee, The Welsh Government’s Legislative Consent Memoranda on the Employment Rights Bill, March 2025, Recommendation 1

¹⁰ LJC Committee, The Welsh Government’s Legislative Consent Memoranda on the Employment Rights Bill, March 2025, paragraph 42

¹¹ LJC Committee, The Welsh Government’s Legislative Consent Memoranda on the Employment Rights Bill, March 2025

¹² Welsh Government response to the Legislation, Justice and Constitution Committee’s Report on the Welsh Government’s Legislative Consent Memorandum on the Employment Rights Bill, April 2025

that they have regard to devolved matters because they have an impact on Senedd legislation. It states that:

*"These clauses make provision for Wales, England and Scotland identical to that made by parts of the Senedd's Trade Union (Wales) Act 2017. Therefore, these provisions render those parts of the Trade Union (Wales) Act 2017 redundant. Whilst the legal position will not be changed by these amendments, that position will no longer be the result of Senedd legislation – it will be the result of UK legislation."*¹³

11. As clause 71 of the Bill as introduced amends the *Trade Union (Wales) Act 2017* by repealing its section 1, the Welsh Government states that it is of the view that this direct amendment of a Senedd Act is inherently linked to the effect of clauses 53, 56 and 58 of the Bill as introduced. As such, the Welsh Government considers that clause 71 of the Bill as introduced requires consent.

12. In its response, the Welsh Government also rejected the recommendation that 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; clause 31 in the version of the Bill as brought from the Commons). It states that:

"The UK Government is already able to make regulations on equalities matters which would apply to the Senedd Commission under section 153(1) of the Equality Act 2010.

*Therefore, the creation of a new power for the Secretary of State to impose equalities-related duties on the Senedd Commission would be congruent with the existing legislative landscape."*¹⁴

13. The Welsh Government also states that excluding the Senedd Commission from the scope of that new power would create significant inconsistency for the following two reasons:

¹³ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Employment Rights Bill, April 2025

¹⁴ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Employment Rights Bill, April 2025

“First, the Scottish Parliamentary Corporate Body and the Parliamentary Commissioner for Administration (the only other two entities listed as “Parliamentary and devolved bodies” in Schedule 19 to the Equality Act 2010) will be subject to regulations made under clause 28. It would be anomalous for the Senedd Commission to be excluded from the scope of that provision when other similar bodies are included, particularly when one of those bodies is the equivalent of the Senedd Commission for a different devolved administration.

Second, even if the Senedd Commission were carved out from the scope of clause 28, the Secretary of State would still be able to require it to do various things under section 153(1) of the Equality Act 2010 but not under the new section 78A of the same legislation. It would be incongruous if the Secretary of State could make regulations applicable to the Commission under section 153(1) but not under the new section 78A, given that both provisions deal with similar equalities-related issues”¹⁵

14. It added that if the Senedd Commission was excluded from the scope of clause 26 of the Bill as introduced, the Welsh Ministers would not be able to impose equalities-related duties on the Senedd Commission via section 153(2) of the *Equalities Act 2010*, as the Senedd Commission is not listed in Part 2 of Schedule 19 to that Act. The Welsh Government states that the result would be that the Senedd Commission would not be required to produce an equality action plan in relation to gender equality under any provision, and that this would essentially place it in a unique position as compared to other public bodies.

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

15. On 1 April 2025, the Minister laid a further supplementary legislative consent memorandum (Memorandum No. 3) in respect of amendments tabled to the Bill for consideration at Commons Report stage.¹⁶

¹⁵ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Employment Rights Bill, April 2025

¹⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\): Employment Rights Bill](#), 1 April 2025

16. The Business Committee agreed that the Legislation, Justice and Constitution Committee, the Economy, Trade and Rural Affairs Committee, the Equality and Social Justice Committee, and the Health and Social Care Committee, should report on Memorandum No. 3 by 20 June 2025.¹⁷ The reporting deadline was later extended to 11 July 2025.¹⁸

Provisions for the which the Senedd's consent is required

17. The Minister states in Memorandum No. 3 that the UK Government tabled amendments to the Bill on 5 March 2025; amendments which were agreed on 11 and 12 March 2025¹⁹. Although the majority of these amendments do not make relevant provision²⁰, the Minister states that the following amendments have regard to devolved matters, and as such require the Senedd's consent:

- NC37 (power to establish a social care negotiating body);
- Gov 98 to 150 and Gov 153 to 161 (changes to existing social care negotiating body provisions);
- Gov 227 and Gov 229 to 235 (procedure for regulations and extent);
- Gov 151, Gov 152 and Gov 250 (enforcement).²¹

18. The Minister provides further background information about these amendments:

“Further to meetings with the Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets, Justin Madders MP, and the Minister of State for Care, Stephen Kinnock MP, the UK Government has tabled amendments to the Employment Rights Bill enabling the creation of a Social Care Negotiation Body for Wales.

The purpose a Social Care Negotiation Body for Wales would be to develop and agree Fair Pay Agreements in social care which

¹⁷ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Employment Rights Bill, May 2025

¹⁸ Business Committee, Revised timetable for consideration: Legislative Consent Memorandum on the Employment Rights Bill, June 2025

¹⁹ Employment Rights Bill, Report Stage Decisions, 12 March 2025

²⁰ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3): Employment Rights Bill, 1 April 2025, paragraph 4

²¹ Memorandum No. 3, paragraph 16

would shape the terms and conditions of workers in the social care sector.

In contrast to the proposed Adult Social Care Negotiation Body for England, a Social Care Negotiation Body for Wales would be able to deal with the remuneration, terms and conditions and any other specified matter relating to the employment of adult and children's social care workers. This difference in approach takes account of the fact that, unlike in England, adult and child social care are organisationally integrated in Wales.”²²

19. In respect of amendment NC37, the Minister states:

“This new clause would enable the Welsh Ministers and the Scottish Ministers, with the agreement of the Secretary of State, to establish a Social Care Negotiating Body for Wales and for Scotland respectively. As a result, Chapter 2 of Part 3 is amended to enable regulation-making powers conferred on the Secretary of State by Chapter 2 also to be exercisable by the Welsh Ministers and the Scottish Ministers. These powers may not be exercised without the Secretary of State’s agreement.”²³

UK Government view on the need for consent

20. The Minister states that the UK Government agrees on the need for legislative consent on the amendments relating to a Social Care Negotiating Body for Wales.²⁴

Financial implications

21. According to the Minister, while there are “no immediate financial implications”, the Welsh Government “will consider the financial implications of establishing a Social Care Negotiating Body for Wales before seeking to use powers conferred on Welsh Ministers to establish such a body.”²⁵

²² Memorandum No. 3, paragraphs 13 to 15

²³ Memorandum No. 3, paragraph 16

²⁴ Memorandum No. 3, paragraph 17

²⁵ Memorandum No. 3, paragraph 19

The Welsh Government's position

22. In the Memorandum, the Minister states that the requirement to obtain Secretary of State consent to the exercise of the Welsh Ministers' regulation-making function in amendment NC37 is "unnecessary", and that he has informed UK Government of that position.²⁶

23. The Minister however goes on to state:

*"Nonetheless, recognising the significant challenges the social care sector is facing in terms of fair pay, which in turn affects the delivery of critical services to our most vulnerable people, aligning enforcement powers and enabling a coordinated approach to the development of social care negotiating bodies and Fair Pay Agreements in this sector is critical. In recognition of these factors, as well as to enable these provisions to be implemented as swiftly as possible, it is, in my view, appropriate to deal with these provisions in this UK Bill. The Bill is consistent with the Welsh Government's focus on fair work."*²⁷

24. To conclude, the Minister recommends that the Senedd supports the Bill's proposals and gives its consent.²⁸

2. Committee consideration

25. We considered Memorandum No. 3 at our meeting on 6 May 2025.²⁹

26. At our meeting on 9 June 2025³⁰ we noted the Minister for Children and Social Care's oral evidence to the Health and Social Care Committee in respect of Memorandum No. 3; evidence which was heard on 5 June 2025³¹.

27. We agreed our report on 16 June 2025.³²

²⁶ Memorandum No. 3, paragraph 20

²⁷ Memorandum No. 3, paragraph 20

²⁸ Memorandum No. 3, paragraph 20

²⁹ ~~Legislation, Justice and Constitution Committee~~, 6 May 2025

³⁰ ~~Legislation, Justice and Constitution Committee~~, 9 June 2025

³¹ Health and Social Care (HSC) Committee, ~~5 June 2025~~, ~~Record of Proceedings~~ (RoP)

³² ~~Legislation, Justice and Constitution Committee~~, 16 June 2025

Our view

Provisions requiring consent

28. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 3.

29. We also note the position of the UK Government as regards consent.

Conclusion 1. We agree with the Welsh Government's assessment, as set out in Memorandum No. 3, of the provisions within the Bill which require the consent of the Senedd in accordance with Standing Order 29; but this is subject to our views set out in conclusion 2.

30. We note that clause 151 of the Bill provides UK Government Ministers with the power to make consequential provisions in relation to the Bill. This includes a power to amend, repeal or revoke primary legislation (a Henry VIII power), which includes an Act or Measure of the Senedd. It appears that the Children's Wellbeing and Schools Bill contains similar provision³³; provision which the Welsh Government has accepted should be subject to Senedd consent³⁴. On this basis, we believe that clause 151 contains relevant provision for the purposes of Standing Order 29.

Conclusion 2. We believe that clause 151 of the Bill as brought from the Commons contains provision which requires the consent of the Senedd in accordance with Standing Order 29.

31. The Memorandum, Memorandum No. 2, and Memorandum No. 3 do not however make reference to this provision, and the most recent Explanatory Notes to the Bill³⁵ indicate that the UK Government does not consider that clause 151 requires consent. We believe that the Welsh Government should clarify whether it considers that clause 151 requires the consent of the Senedd.

Recommendation 1. The Minister should outline whether he considers that clause 151 of the Bill includes provision which requires the consent of the Senedd.

Recommendation 2. The Minister should provide information about the discussions he has had with the UK Government about clause 151 and accordingly

³³ The relevant provisions in the Children's Wellbeing and Schools Bill, as brought from the Commons, are within clause 63 (Power to make consequential provision).

³⁴ Legislation, Justice and Committee, [12 May 2025, Record of Proceedings](#) [75]

³⁵ [Employment Rights Bill, as brought from the Commons, Explanatory Notes, Annex A](#)

the UK Government's view on how it intends or could exercise the powers in devolved areas.

Amendment NC37 – Social Care Negotiation Body for Wales

32. We note that the Minister is broadly supportive of the provisions in amendment NC37 (clause 36 in the version of the Bill as brought from the Commons³⁶), which enables the Welsh Ministers to establish a Social Care Negotiating Body for Wales through regulations.

33. We note that the Memorandum provides some information about the broad aims of a Social Care Negotiating Body for Wales, and that it would be able to “deal with the remuneration, terms and conditions and any other specified matter relating to the employment of adult and children’s social care workers”.³⁷ However, we do not believe that the level of detail provided is at the level which would accompany primary legislation containing similar provision introduced to the Senedd.

34. It would appear to us that the provisions in NC37 are significant. Should such provisions – or broadly similar provisions – be within the legislative competence of the Senedd, we believe that as a matter of principle they should be included in a Bill introduced to the Senedd. This would enable a higher level of scrutiny to be undertaken, in place of the more limited scrutiny that devolved provision within UK Parliamentary legislation is subjected to via the legislative consent process.

Conclusion 3. We consider it is unsatisfactory to use UK legislation to enable the creation of a new devolved statutory body, and that as a matter of principle, such policy proposals should be reserved for inclusion in primary legislation introduced to the Senedd.

35. We note that in evidence to the Health and Social Care Committee, the Minister for Health and Social Care said as follows in respect of introducing legislation in this policy area:

“... as a Welsh Government we've been striving to promote fair work in the social care workforce for many years, but what we have not had are the legislative levers on enforcement around the non-devolved elements of employment law. So, by being part of this legislation, that enables us to continue to do the

³⁶ Employment Rights Bill, as brought from the Commons, 14 March 2025

³⁷ Memorandum No. 3, paragraph 15

work that we're doing here in Wales on the social care workforce in the devolved setting, but have the security of employment legislation that is underpinned by enforcement action."³⁸

36. When asked to explain why the Welsh Government had not instead sought to introduce a Bill into the Senedd, we note that the Minister for Health and Social Care said:

*"In some respects, we have to be pragmatic about what is achievable, certainly in the time remaining in this Senedd term. But, more importantly ... although the Bill does have regard to devolved matters in that it will impact on social care, it is primarily a Bill that is making provision related to reserved matters, i.e. employment law. So, it is on that basis that we felt that the UK Bill offers the most coherent approach to what we are seeking to do in this area anyway, and underpinning that with legally enforceable rights. By presenting the LCM and hopefully getting the support of the Senedd, it will really enable us to make those provisions quickly and align and co-ordinate right the way across the UK."*³⁹

37. We also note that the Minister for Health and Social Care acknowledged to the Health and Social Care Committee that the Bill is "a novel piece of legislation" in that it will apply in an area of devolved competence⁴⁰, and when asked again to clarify whether the Senedd would be able to legislate in respect of a social care negotiating body responsible for developing and agreeing fair pay agreements, she said:

*"We can, but they're not legally enforceable. That's the difference. What having a Wales negotiating body within the context of this legislation would enable us to do would be to legally enforce any agreements that are made within that body."*⁴¹

38. Whilst we appreciate that an Employment Rights Bill is unlikely to fall within the legislative competence of the Senedd, it is unclear to us whether the Senedd

³⁸ HSC Committee, 5 June 2025, RoP [330]

³⁹ HSC Committee, 5 June 2025, RoP [332]

⁴⁰ HSC Committee, 5 June 2025, RoP [340]

⁴¹ HSC Committee, 5 June 2025, RoP [344]

would have the legislative competence to introduce a Bill focussed on social care which makes provision for a Social Care Negotiating Body for Wales – either as provision similar to that proposed by this Bill, or as provision for a body with a broadly similar purpose. We believe this question should be addressed by the Welsh Government ahead of the consent debate, in order to inform the Senedd's decision as to whether or not to provide consent to the inclusion of provision that has regard to devolved matters within NC37 of the Bill.

Recommendation 3. The Minister should provide the Welsh Government's assessment of whether the Senedd would have the legislative competence to introduce a Bill into the Senedd containing provision to create a Social Care Negotiating Body for Wales, or a body with similar purposes.

39. We view the fact that the Bill enables the creation of a devolved statutory body via regulations to be particularly unsatisfactory. The delivery of such significant policy proposals are normally reserved for inclusion in primary legislation: for example, provision to create the Social Partnership Council for Wales was included in the *Social Partnership and Public Procurement (Wales) Act 2023*, and not in regulations emanating from that Act. We therefore believe that the Minister should provide further justification as to why it is considered appropriate that a Social Care Negotiating Body for Wales may be created via subordinate legislation.

Recommendation 4. The Minister should explain why he considers it appropriate that a Social Care Negotiating Body for Wales may be created via subordinate legislation.

Requirement to obtain UK Government Ministers' consent

40. We acknowledge the Minister's view, as stated in Memorandum No. 3, that it is "unnecessary" that the Welsh Ministers must obtain the consent of UK Government Ministers before exercising the powers in amendment NC37, and that he has informed the UK Government of that position.

41. We agree with the principle that powers held by the Welsh Ministers in devolved areas should not be restricted by any requirement to seek the consent of the UK Government, and note that one of the Welsh Government's principles on UK legislation in devolved areas⁴² is that delegated powers in such legislation should be conferred on the Welsh Ministers alone.

⁴² Welsh Government, [Principles on UK Legislation in devolved areas](#), December 2024

42. However, it is unclear from Memorandum No. 3 what further steps the Minister has taken or intends to take to seek for the removal of this consent requirement, in light of his recommendation that the Senedd supports the proposals in the Bill and gives its consent.

43. We note that when asked by the Health and Social Care Committee to set out how the Welsh Government had reached its position in respect of the Bill, the Minister for Health and Social Care said:

*"... we were very well aware of what being part of this Bill would mean, and what agreeing to consent would mean. ... we made it very clear to the UK Government that we didn't think this was a necessary provision, and we continue to have that conversation with them ... There was a lot of discussion between Welsh Government lawyers and UK Government lawyers to try to persuade them of our view, and, unfortunately, we could not persuade the UK Government of that view. So, I had to make a decision, in the end, along with my colleagues the Minister for Culture, Skills and Social Partnership, and the Counsel General, about what the greater benefit to the social care workforce would be."*⁴³

44. The Minister for Social Care later added:

*"It is what it is ... we don't agree that this should be the way that it is done. ... But I think you have to come to a position, at some point, about what is the greater good ..."*⁴⁴

45. In addition, in response to a suggestion put to the Minister for Social Care that she was content to ignore the Welsh Government's principles on UK legislation in devolved areas, we note that she said:

"I am absolutely not saying that we have ignored [the principles] ... I've explained very, very clearly the very lengthy and detailed conversations that we have had at ministerial and official level to try to overcome this, and we have not, at this stage, been able to do that. But I still believe, and so do our trade union partners and our stakeholders believe, that the greater good here is that we will have legally enforceable

⁴³ HSC Committee, 5 June 2025, RoP [338]

⁴⁴ HSC Committee, 5 June 2025, RoP [349]

employment rights in social care in Wales that we otherwise would not have. And we do not believe in the United Kingdom that we should have colleagues in Scotland and England finding themselves in a better position than they are in Wales."⁴⁵

46. We also note that when asked what consideration the Welsh Government was giving to seek the removal of the consent requirement by non-government amendments tabled in the House of Lords⁴⁶, the Minister for Social Care said:

*"There are potentially other options down the way. We are still in the early stages of this Bill. ... We also have written to the UK Government about a potential carve-out in the future ... a future [Welsh] Government may decide to develop legislation in this area, and then there would be the option of a carve-out if we can get agreement on that."*⁴⁷

Recommendation 5. The Minister should provide details of the consideration being given to sharing draft amendments to remove the consent mechanism in amendment NC37 with members of the House of Lords, for the purposes of tabling those amendments to the Bill.

47. We similarly note that an official accompanying the Minister for Health and Social Care told the Health and Social Care Committee that the Minister for Social Partnership had written to the UK Government seeking a carve-out from Schedule 7B to the *Government of Wales Act 2006* to enable the Senedd to remove the consent requirement in the future. The official said that the Minister for Social Partnership was awaiting a response.⁴⁸

Financial implications

48. We note from the Memorandum that the Welsh Government "will consider the financial implications of establishing a Social Care Negotiating Body for Wales before seeking to use powers conferred on Welsh Ministers to establish such a body."⁴⁹

⁴⁵ HSC Committee, 5 June 2025, RoP [351]

⁴⁶ In evidence to the Committee for the Scrutiny of the First Minister in March 2025, the First Minister, Eluned Morgan MS, described the sharing of amendments with members of the House of Lords for tabling in that House as a mechanism by which amendments "beneficial to Wales" may be made to UK Parliament legislation.

⁴⁷ HSC Committee, 5 June 2025, RoP [355] and [361]

⁴⁸ HSC Committee, 5 June 2025, RoP [356]

⁴⁹ Memorandum No. 3, paragraph 19

49. We further note that in evidence to the Health and Social Care Committee, the Minister for Health and Social Care said as follows in respect of the Bill's financial implications for the Welsh Government:

*"... as this is a piece of UK legislation, we would very much be expecting the UK Government to be providing financial support for its implementation."*⁵⁰

50. We also note that when asked if the Welsh Government has undertaken an assessment of the likely costs associated with the provisions:

*"... we haven't done the assessments yet. That will be done. ... We've looked at the UK Government's impact assessments for the Bill, but we need to do more work on this specifically in Wales ... and we are committed to evaluating that before we lay any regulations."*⁵¹

Conclusion 4. It does not appear to us to be a satisfactory position that the Welsh Ministers are taking powers without first undertaking an initial assessment of the potential financial implications of exercising those powers, and without obtaining commitments from the UK Government on the provision of financial support.

Recommendation 6. The Welsh Government should explain why it has not conducted an initial assessment of the potential financial implications of exercising the powers in amendment NC37.

Intergovernmental engagement

51. As stated in Memorandum No. 3, amendment NC37 was tabled to the Bill following meetings with the Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets, Justin Madders MP, and the Minister of State for Care, Stephen Kinnock MP.⁵²

52. It is however unclear to us from the information provided in Memorandum No. 3 whether the Minister was present at these meetings, and what the nature of the discussions were.

⁵⁰ HSC Committee, 5 June 2025, RoP [380]

⁵¹ HSC Committee, 5 June 2025, RoP [383]

⁵² Memorandum No. 3, paragraph 13

53. In evidence to the Health and Social Care Committee, the Minister for Health and Social Care explained that, following earlier discussions with the UK Government, amendment NC37 tabled at the request of the Welsh Government:

"We've had ongoing discussions with the UK Government. Very early on, when the UK Government came into power, I had early meetings with the Minister, Stephen Kinnock, who is the Minister for adult social care in England. He had explained to us that they had proposals around adult social care, and what they were going to do in that area with the fair pay agreement. So, it was from those very early discussions that we then said, 'Well, really we need to have those provisions applicable in Wales as well.' The Scottish Government were making similar representations ...".⁵³

Conclusion 5. We believe that, in the interests of transparency, Memorandum No. 3 ought to have provided clarity on the fact the Welsh Government sought provision for Wales in the Bill in the form of amendment NC37.

Senedd procedure for regulations made under the Bill

54. We note that the delegated powers memorandum for the Bill, published by the UK Government, notes that regulations made under the powers in amendment NC37 will be subject to the affirmative procedure. It provides the following justification for the choice of procedure:

"The Government considers it appropriate that Parliament, the Senedd Cymru and the Scottish Parliament have the opportunity to debate and formally approve the regulations by way of an affirmative procedure, in order to ensure it has sufficient oversight and scrutiny of the creation of a new public body and important accompanying provision relating to appointments and decision making processes. These aspects are fundamental to the workings and processes of the Body, and it is appropriate that there is effective scrutiny."⁵⁴

55. Memorandum No. 3 does not however set out the Senedd procedure for such regulations, as is required by Standing Order 29.3(iv). We believe that the

⁵³ HSC Committee, 5 June 2025, RoP [335]

⁵⁴ Employment Rights Bill, Memorandum from the Department of Business and Trade to the Delegated Powers and Regulatory Reform Committee, 20 March 2025

Minister should confirm whether it is the case that regulations made under amendment NC37 will be subject to the affirmative procedure, and should also set out the Senedd procedure in respect of any other regulation-making powers conferred on the Welsh Ministers by the provision in the Bill.

Recommendation 7. The Welsh Government should confirm the Senedd procedure to which subordinate legislation to be made in the exercise of the powers contained in the provisions set out in Memorandum No. 3 are to be subject.

56. We also believe in the importance of extensive consultation before significant powers are exercised, and note that the power to make regulations under amendment NC37 is not accompanied by a duty for the Welsh Ministers to consult. We believe that the Bill should include such a duty, and should be accordingly amended.

Recommendation 8. The Welsh Government should seek the Bill's amendment to include a duty to consult before powers under amendment NC37 may be exercised.

57. We acknowledge that there may be limited time remaining in the Bill's passage to achieve the above recommendation; we however note that should provision similar to that contained in amendment NC37 be included in a Bill introduced to the Senedd, Members of the Senedd would be able to table their own amendments to seek the inclusion of a duty to consult.