

# **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Employment Rights Bill**

July 2025



## 1. Background

1. The Employment Rights Bill<sup>1</sup> (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."*<sup>2</sup>

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 Lords, and completed Lords Committee Stage on 24 June 2025<sup>3</sup>. At the time of agreeing this report on 14 July 2025, the Bill was due to enter Lords Report Stage.

## **The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No. 3)**

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 memorandum<sup>4</sup> (the

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

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

<sup>3</sup> ~~Employment Rights Bill~~ [HL Bill 113], as amended in Committee

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

Memorandum) and a supplementary legislative consent memorandum<sup>5</sup> (Memorandum No. 2) in respect of the Bill.

**6.** We reported on these memoranda on 26 March 2025<sup>6</sup>, and subsequently received a response from the Minister to our report on 30 April 2025.<sup>7</sup>

**7.** 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.<sup>8</sup>

**8.** We reported on Memorandum No. 3 on 19 June 2025.<sup>9</sup> Our report provides a summary of our report on the Memorandum and Memorandum No. 2, and of the Minister's response to that report. It also expresses our view that:

- a clause of the Bill not referenced in either memoranda – clause 151 of the Bill as brought from the Commons – contains provision which requires the consent of the Senedd;
- the use of UK legislation to enable the creation of a new devolved statutory body – in the case of the Bill, a Social Care Negotiation Body for Wales – is unsatisfactory; and
- the Welsh Ministers' decision to take powers without first undertaking an initial assessment of the potential implications of exercising those powers is unsatisfactory.

**9.** Our report on Memorandum No. 3 also contains a series of recommendations, including on clause 151 as referenced above, in respect of provisions on a Social Care Negotiation Body for Wales, and in respect of a consent mechanism in the Bill. A response from the Welsh Government to this report is yet to be received, although – as stated at paragraph 13 below – the Welsh Government agrees with the Committee's conclusion that clause 151 requires the Senedd's consent.

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<sup>5</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\): The Employment Rights Bill](#), 19 December 2024

<sup>6</sup> Legislation, Justice and Constitution (LJC) Committee, [The Welsh Government's Legislative Consent Memoranda on the Employment Rights Bill](#), March 2025

<sup>7</sup> [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

<sup>8</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\): Employment Rights Bill](#), 1 April 2025

<sup>9</sup> LJC Committee, [The Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Employment Rights Bill](#), June 2025

## **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4)**

**10.** On 8 July 2025, the Minister laid a further supplementary legislative consent memorandum (Memorandum No. 4) in respect of amendments tabled to the Bill for consideration at Lords Report stage.<sup>10</sup>

**11.** 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 Memorandum No. 4 by 14 July 2025.<sup>11</sup>

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

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**12.** The Minister states in Memorandum No. 4 that the UK Government tabled amendments to the Bill on 7 July 2025.<sup>12</sup> The Minister states that tabled amendments to the following clauses of the Bill as amended at Lords Committee stage have regard to devolved matters, and as such require the Senedd's consent:

- clause 26 – Dismissal for failing to agree to variation of contract, etc (with the exception of the amendments inserting the new section 104J into the *Employment Rights Act 1996* and specifying the parliamentary procedure for regulations made under it);
- clause 43 – Power to ratify agreements;
- clause 44 – Effect of regulations ratifying agreements;
- clause 45 – Power of appropriate authority to deal with matters;
- clause 46 – Guidance and codes of practice; and
- clause 49 – Regulations under section 43 or 45: supplementary.<sup>13</sup>

**13.** The amendment to clause 26 permits local authorities and public bodies in Wales to carry out so-called 'fire and rehire' contract variations in limited circumstances.

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<sup>10</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 4): Employment Rights Bill, 8 July 2025

<sup>11</sup> Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Employment Rights Bill, July 2025

<sup>12</sup> Memorandum No. 4, paragraph 3

<sup>13</sup> Memorandum No. 4, paragraphs 17 to 19

**14.** The amendments to clauses 43 to 46, and to clause 49, permit regulations to require any code of practice or guidance issued by the Welsh Ministers relating to the Social Care Negotiating Body for Wales (the Body) to be laid before the Senedd, where such code or guidance imposes sanctions for failure to comply with a duty in the code or guidance. The amendments also allow regulations that are made by the Welsh Ministers regarding the ratification of, or failure to reach, an agreement by the Body to disapply certain regulations made under the provisions of the Bill. Furthermore, such regulations could require more favourable terms than those agreed to be applied to the relevant employees.

**15.** The Minister also states in Memorandum No. 4 that clause 151 of the Bill as amended at Lords Committee stage (and as referred to in our report on Memorandum No. 3) contains provision that has regard to devolved matters, and as such requires the Senedd's consent.<sup>14</sup>

### **UK Government view on the need for consent**

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**16.** The Minister states that the UK Government agrees that the amendments in relation to social care (amendments to clauses 43 to 46 and to clause 49) require the Senedd's legislative consent. However, the UK Government view is that the Senedd's consent is not required for the amendments in relation to 'fire and rehire' (clause 26) or in relation to clause 151.<sup>15</sup>

### **Financial implications**

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**17.** According to the Minister, there are no current and direct financial implications for Wales because of these amendments.<sup>16</sup>

### **The Welsh Government's position**

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**18.** The Minister sets out the Welsh Government's position in respect of the provisions requiring consent at paragraph 24 of Memorandum No. 4:

*"The Welsh Government supports the Employment Rights Bill. We support a consistent approach to 'fire and rehire' across the public sector in Great Britain. The provisions related to a Social Care Negotiating Body in Wales will enable us to use the framework provided by the Employment Rights Bill in a manner that aligns with our social care policy agenda,*

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<sup>14</sup> Memorandum No. 4, paragraph 20

<sup>15</sup> Memorandum No. 4, paragraph 22

<sup>16</sup> Memorandum No. 4, paragraph 25

*commissioning model and funding arrangements. Clause 151 is essential to ensure that the statute book can be amended appropriately to enable the Employment Rights Bill to be operable."*

**19.** At paragraph 26, the Minister concludes:

*"Recognising the importance of an aligned approach to employment rights and the provision of social care across Great Britain, it is, in my view, appropriate to deal with these provisions in this UK Bill. The Bill will enhance employment rights and remove unnecessary restrictions on trade unions and as such is consistent with the Welsh Government's focus on fair work. I recommend that the Senedd supports the proposals and gives its consent."*

## 2. Committee consideration

**20.** We considered Memorandum No. 4 at our meeting on 14 July 2025<sup>17</sup> and agreed our report at the same meeting.

### Our view

#### Provisions requiring consent

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**21.** 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. 4. In particular, we acknowledge the Welsh Government's decision to seek consent for clause 151, in line with the conclusion we reached in our report on Memorandum No. 3.

**22.** 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. 4, of the provisions within the Bill which require the consent of the Senedd in accordance with Standing Order 29.

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<sup>17</sup> Legislation, Justice and Constitution Committee, 14 July 2025