

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)

EMPLOYMENT RIGHTS BILL

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales which has regard to devolved matters.
2. The Employment Rights Bill (“the Bill”) was introduced in the UK Parliament, the House of Commons, on 10 October 2024. I laid an LCM on 5 December and supplementary LCMs following UK Government amendments on 19 December 2024 and 1 April 2025.

Amendments

3. The UK Government tabled over 60 amendments on 7 July for consideration at Report Stage at the House of Lords.
4. Some of these amendments make provision which does not have regard to devolved matters. However, UK Government amendments to Clauses 26 (with the exception of the amendments inserting the new section 104J into the Employment Rights Act and specifying the parliamentary procedure for regulations made under it), 43, 44, 45 46 and 49 have regard to devolved matters, as detailed below.
5. The Bill, as introduced, can be found at:
<https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf>.
6. The Bill, as amended following Committee Stage at the House of Lords, can be found at:
<https://bills.parliament.uk/publications/61705/documents/6760>.

Policy Objectives

7. The UK Government’s policy objectives are set out in a [published overview of the Bill](#). In summary, these are to:
 - Address one-sided flexibility, ensuring that jobs provide a baseline of security for workers.
 - Support family-friendly rights by improving flexibility and security.
 - Prioritise fairness, equality and well-being of workers.
 - Ensure workers get fair pay for a fair day’s work.

- Modernise trade union legislation, giving trade unions greater freedom to organise, represent and negotiate on behalf of their members.
- Improve enforcement of employment rights.

Summary of the Bill

8. The Bill is sponsored by the Department for Business and Trade and is intended to deliver on many of the reforms set out in the UK Government's 'Plan to Make Work Pay'.
9. The key provisions of the Bill cover updating and enhancing existing employment rights and making provision for new rights; making provision for negotiating bodies in particular sectors; and reforming certain aspects of trade union and industrial relations legislation. It further creates new mechanisms for the enforcement of employment law.
10. The Bill makes provision in the following key areas:
 - Part 1 deals with employment rights, including reforming employment rights in relation to guaranteed hours, flexible working, statutory sick pay, tips and gratuities, entitlements to leave, protection from harassment, and dismissal.
 - Part 2 deals with other matters relating to employment, including the procedure for handling redundancies, public sector outsourcing, and the duties of employers relating to equality.
 - Part 3 deals with pay and conditions in particular sectors, including pay and conditions of school support staff in England and the establishment of social care negotiating bodies for England, Wales and Scotland.
 - Part 4 deals with trade unions and industrial action, including a right to a statement of trade union rights, a right of trade unions to access workplaces, amendments to procedures relating to trade union recognition, trade union finances, and facilities provided to trade union representatives and members, blacklists, industrial action, and ballots, the provision of information to employers, picketing and protection for taking industrial action, the repeal of provision about strikes and minimum service levels, and the functions of the Certification officer (who is appointed by the Secretary of State under the Trade Union and Labour Relations (Consolidation) Act 1992).
 - Part 5 deals with the enforcement of labour market legislation, conferring on the Secretary of State the function of enforcing labour market legislation, with enforcement officers appointed for this purpose.

- Part 6 makes general provision in relation to the power to make consequential amendments, power to make transitional or saving provision, regulations, financial provision, extent, commencement, and short title.
11. The Welsh Government supports the Bill and the broader 'Plan to Make Work Pay'. Prior to the Bill's introduction and subsequently, constructive and regular engagement between the Welsh Government and the UK Government at Ministerial and official levels has taken place.
 12. The Bill has the potential to impact on workers in devolved public services. However, the Bill primarily makes provision regarding reserved matters. The main focus of the Bill is in relation to the reserved matters of employment rights and industrial relations. In addition, some clauses apply only in relation to England.
 13. As detailed below, certain provisions of the Bill make provision in relation to Wales with regard to devolved matters. As such, the Senedd's consent is required in connection with those provisions.

Update on position since the publication of LCM N° 3

14. The UK Government has tabled amendments which restrict the scope of the ban on 'fire and rehire' and specify when financial difficulties will mean that the ban does not apply. The amendments also introduce new requirements in relation to practices similar to 'fire and rehire'.
15. In addition, the UK Government has tabled amendments relating to social care and the provisions within the Bill which enable the establishment of social care negotiating bodies in England, Scotland and Wales.
16. A description of all these amendments and their effect is provided in the section below.

Provisions tabled by the UK Government to the Bill for consideration at Lords Report Stage for which consent is required

17. **Amendments to Clause 26 (with the exception of the amendments inserting the new section 104J into the Employment Rights Act and specifying the parliamentary procedure for regulations made under it)**

Amendments to Clause 26 include three measures which provide that:

- (a) any dismissal based on a refusal to accept a 'restricted variation' of contract (a variation which relates to certain matters such as pay, hours of work or pensions) will be unfair except where certain conditions are met.

(b) in determining whether a dismissal based on a refusal to accept a variation of contract which is not a restricted variation, is fair (i.e. lawful), certain matters must be considered.

(c) dismissal of an employee in order to replace them on a broadly like for like basis with someone who is not an employee (e.g. an agency worker) will automatically be unfair except where certain conditions are met.

The measures at (a) and (c) above make specific provision for local authorities and public authorities which affects their functions. By contrast, the measure at (b) does not make such differentiated provision and simply applies to all employers.

For local authorities, the prohibitions in (a) and (c) above will not apply where:

- i. a relevant intervention was in effect in relation to the local authority;
- ii. a relevant direction under section 106 or 107 of the Local Government and Elections (Wales) Act 2021 ('the direction') has been made and one of the reasons given for the making of the direction is that the local authority is experiencing financial difficulties;
- iii. the direction contains provisions relating to the financial management or governance of the local authority;
- iv. the reason for the variation of the employee(s) contract was to eliminate, prevent or significantly reduce or mitigate the effect of the financial difficulties;
- v. in all the circumstances the authority could not reasonably have avoided the need to make the variation.

The above amendments relating to local authorities have been drafted to ensure they accurately reflect the Welsh legislation on support and improvement for local authorities in Wales, including Ministerial powers of intervention.

For public bodies that are not local authorities, the prohibitions in (a) and (c) above will not apply where:

- i. the reason for the replacement was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which at the time of the dismissal were affecting, or were

likely in the immediate future to affect the financial sustainability of carrying out the employer's statutory functions,

- ii. in all the circumstances the employer could not reasonably have avoided the need to replace the employee.

All devolved Welsh authorities (DWAs) are “public sector employers” within the meaning of the definition applicable to the amendments. Local authorities in Wales are DWAs and any interventions in relation to them are made by the Welsh Ministers. The amendments at (a) and (b) above alter the scope of the function DWAs have to dismiss their employees. Further, they modify the legal effect of the Welsh Ministers’ function of intervening in a local authority (by providing that an intervention may render it lawful for the relevant local authority to use ‘fire and rehire’ or replace employees with non-employees). Finally, since the Welsh Ministers may exercise the functions of a local authority they have intervened in, the amendments also modify a function (dismissal of staff) which may be exercisable (during an intervention) by the Welsh Ministers themselves. For all these reasons, the amendments make relevant provision.

The amendments to Clause 26 relating to the financial difficulties exception to the fire and rehire ban and the ban on replacing employees with non-employees ((a) and (b) above) alter the functions of DWAs (including local authorities) and therefore constitute relevant provision for the purposes of Standing Order 29.

The amendments relating to taking into account certain matters in determining the fairness of a dismissal ((b) above) do not alter the functions of DWAs and so do not make relevant provision.

18. Amendments to Clause 46

Clause 46 relates to the new social care negotiating bodies to be set up under powers conferred in the Bill. It is a power to make regulations enabling appropriate authorities (the Welsh Ministers in respect of a Welsh Social Care Negotiating Body) to make regulations about the issuing of guidance or codes of practice.

Clause 46(2) enables the appropriate authority to impose duties on persons in relation to provisions of the guidance or code of practice as well as sanctions for breach of those duties.

This amendment requires that any regulations under Clause 46(2)(b) (i.e. those which impose sanctions for breach of the guidance or code of practice) provide for the guidance or code of practice to be laid before the relevant legislature (the Senedd in Wales) in accordance with a specified procedure.

The amendments to clause 46 described above alter a function of the Welsh Ministers to be conferred by the Bill and therefore constitute relevant provision for the purposes of Standing Order 29.

19. Amendments to Clauses 43, 44, 45 and 49

Clauses 43 and 45 of the Bill enable appropriate authorities (the Welsh Ministers in the case of Wales) to make regulations ratifying agreements of the relevant negotiating body or making provision about matters on which that body has failed to reach agreement.

Through altering Clauses 44, 45 and 49 these amendments provide for:

- a. the dis-application of regulations made under either Clause 43 or Clause 45 in relation to a term or condition of a social care worker's employment where their application would alter that term or condition to the social care worker's detriment;
- b. that social care workers may be employed on terms more favourable than those agreed by the relevant negotiating body.
- c. consequential amendment of Clauses 45 and 49 of the Bill, necessitated by (i) and (ii).

The amendments to Clauses 44, 45 and 49 described above alter functions of the Welsh Ministers to be conferred by the Bill and therefore constitute relevant provision for the purposes of Standing Order 29.

Other provisions in the Bill for which consent is required

20. Clause 151

Clause 151 of the Employment Rights Bill provides UK 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), including an Act or Measure of the Senedd.

The Welsh Government agrees with the conclusion of the Legislation, Justice and Constitution Committee, in their report on the LCM tabled on 1 April, that this clause requires the Senedd's consent.

Clause 151 enables the Secretary of State to alter Senedd legislation and therefore constitutes relevant provision for the purposes of Standing Order 29.

21. I consider the Senedd's consent is required in relation to the amendments identified and Clause 151 because they have regard to devolved matters.

UK Government view on the need for consent

22. The UK Government agrees the amendments in relation to social care require the Senedd's legislative consent. The UK Government view is that the Senedd's consent is not required for the amendments outlined above in relation to 'fire and rehire' or Clause 151.
23. I consider that these provisions relate to devolved matters, as detailed above, and require an LCM.

Reasons for making these provisions for Wales in the Employment Rights Bill

24. 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, 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.

Financial implications

25. There are no current and direct financial implications for Wales because of these amendments.

Conclusion

26. 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.

Jack Sargeant MS
Minister for Culture, Skills and Social Partnership
8 July 2025