

# LEGISLATIVE CONSENT MEMORANDUM

## THE EMPLOYMENT RIGHTS BILL

1. This legislative consent memorandum 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<sup>1</sup> if a UK Parliamentary Bill makes provision in relation to Wales that has regards to devolved matters.
2. The Employment Rights Bill (“the Bill”) was introduced in the House of Commons on 10 October 2024. The Bill can be found at: <https://bills.parliament.uk/bills/3737/publications>
3. This legislative consent memorandum has been laid outside of the normal two-week deadline due to the scale and complexity of the legislation.

### Policy Objectives

4. The UK Government’s policy objectives are set out in a [published overview of the Bill](#). In summary, these are stated to:
  - a. Address one-sided flexibility, ensuring that jobs provide a baseline of security for workers.
  - b. Support family-friendly rights by improving flexibility and security.
  - c. Prioritise fairness, equality and wellbeing of workers.
  - d. Ensure workers get fair pay for a fair day’s work.
  - e. Modernise trade union legislation, giving trade unions greater freedom to organise, represent and negotiate on behalf of their workers.
  - f. Improve enforcement of employment rights.

### Summary of the Bill

5. The Bill is sponsored by the Department for Business and Trade.
6. The Bill is designed to deliver the key legislative reforms set out in the UK Government’s [‘Plan to Make Work Pay’](#).
7. The key provisions of the Bill cover updating and enhancing existing employment rights and making provision for new rights; making provision regarding pay and conditions in particular sectors; and making reforms in

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<sup>1</sup> Please note in accordance with Welsh Government policy we refer to the legislature in Wales as “Senedd Cymru” on first use and “the Senedd” thereafter unless the context stipulates otherwise.

relation to trade union matters and industrial action. It further creates new mechanisms for the enforcement of employment law.

8. The Bill contains 119 clauses and 7 Schedules, and makes provision in the following key areas:
  - a. 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.
  - b. 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.
  - c. Part 3 deals with pay and conditions in particular sectors, including pay and conditions of school support staff in England and the establishment of the Adult Social Care Negotiating Body (the remit of which will be confined to England).
  - d. 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 the conditions for trade union recognition; trade union finances; 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).
  - e. 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.
  - f. 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.
9. 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.
10. The Bill has the potential to impact on workers in devolved public services. However, the Bill primarily makes provision regarding reserved matters. The focus of the Bill is on employment rights, and reforms to

trade union matters and industrial action. This falls within the reserved matter of Employment and Industrial Rights. In addition, clauses 28 to 44 apply only in relation to England.

11. 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.

### **Provisions in the Bill for which consent is required**

12. I consider the Senedd's consent is required in relation to the clauses identified below in so far as they make provision with regard to devolved matters.

#### **Clause 25:**

Clause 25 amends the Procurement Act 2023 in relation to the protection of transferring workers in outsourcing contracts. 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 from the ambit of the new section, devolved Welsh authorities (save where they are engaging in reserved procurement arrangements and any "devolved Welsh procurement arrangement"). Related provisions of the Procurement Act 2023 were subject to a Legislative Consent Memorandum.

#### **Clause 26:**

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 within scope of the Bill.

#### **Clause 49**

Clause 49 repeals section 116B of the Trade Union and Labour Relations (Consolidation) Act 1992, as inserted by section 15 of the Trade Union Act 2016, which allowed a relevant public sector employer to make deductions from its workers' wages for trade union subscriptions in certain circumstances. The Trade Union (Wales) Act 2017 had disapplied these provisions of the Trade Union Act 2016 as regards devolved Welsh authorities.

## **Clause 52**

Clause 52 repeals sections 172A and 172B of the Trade Union and Labour Relations (Consolidation) Act 1992, which were inserted into the 1992 Act by the Trade Union 2016 Act. These sections enabled a Minister of the Crown to make regulations requiring some sector employers to publish information relating to time off for trade union duties and activities. The Trade Union (Wales) Act 2017 had disapplied these provisions of the Trade Union Act 2016 as regards devolved Welsh authorities.

## **Clause 54**

Clause 54 amends section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992, which was amended by sections 2 and 3 of the Trade Union Act 2016. The effect of the clause is to negate the effect of section 3 of the Trade Union Act 2016, meaning that only a simple majority of those voting for a ballot conducted by a trade union for industrial action is required for the ballot to be successful, with no requirements for any level of turnout. The Trade Union (Wales) Act 2017 had disapplied these provisions of the Trade Union Act 2016 as regards devolved Welsh authorities.

## **Clause 61**

Clause 61 repeals the Strikes (Minimum Service Levels) Act 2023, undoing the changes made by that Act to the Trade Union and Labour Relations (Consolidation) Act 1992. An LCM was needed in relation to the making of the Strikes (Minimum Service Levels) Act 2023. This LCM set out the devolved Welsh public sectors which the Act had the potential to impact.

## **Clause 71**

Clause 71 repeals section 1 of the Trade Union (Wales) Act 2017. The 2017 Act disapplied certain Trade Union Act 2016 amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to “devolved Welsh authorities”. These provisions of the Trade Union Act 2016 are repealed through clauses 49, 52 and 54 of the Employment Rights Bill (see above), and therefore section 1 of the Trade Union (Wales) Act 2017 will become redundant and no longer have legal effect.

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

13. The UK Government has advised the Welsh Government that the Senedd’s consent is required for clause 25. The UK Government view is that the Senedd’s consent is not required for the other provisions set out above.

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

14. The Welsh Government supports the Employment Rights Bill. 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 opportunity to strengthen employment rights across Great Britain, including for workers in devolved public services in Wales.

### **Financial implications**

15. There are negligible financial implications in relation to the provisions in the Bill for which consent is required. This is because:
- a. Clause 25: This clause exempts procurements carried out by devolved Welsh authorities from these duties, except when the procurement relates to reserved matters. Such procurement is uncommon, and no significant costs are anticipated.
  - b. Clause 26: The Senedd Commission is the only devolved Welsh public body in scope of this clause. The UK Government's economic analysis assesses the annual direct impact on employers to be small (£0 - £10m in total for all employers across the UK).
  - c. Clauses 49, 52, 54 and 71: There is no practical legal change in respect of Wales due to these clauses, and therefore no financial implications.
  - d. Clause 61: Since the introduction of the Strikes (Minimum Service Levels) Act 2023, no employer in the UK has used minimum service levels or issued work notices. The UK Government's impact assessment of the repeal of the Act does not anticipate public sector financial costs, except for possible costs relating to Border Force industrial action. Border Force is not a responsibility of the Welsh Ministers.

### **Conclusion**

16. In my view it is appropriate to deal with these provisions in this 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.

**Jack Sargeant MS**  
**Minister for Culture, Skills and Social Partnership**  
**5 December 2024**