

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (No 2)

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 Cymru¹ 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 2024.
3. **Amendments**
 - The UK Government tabled 110 amendments on 26 November for consideration at Commons Committee Stage which commenced on 26 November and is scheduled to run until 21 January. The majority of the 110 amendments make provision which do not have regard to devolved matters. However, UK Government amendments 59 to 64 have regard to devolved matters because they fall within the legislative competence of the Senedd, as detailed at paragraph 19 below.
4. The Bill as introduced can be found at:
<https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf>

Policy Objectives

5. The UK Government’s policy objectives are set out in a [published overview of the Bill](#). In summary, these are stated 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 wellbeing 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 workers.

¹ 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.

- Improve enforcement of employment rights.

Summary of the Bill

6. The Bill is sponsored by the Department for Business and Trade.
7. The Bill is designed to deliver the key legislative reforms set out in the UK Government's ['Plan to Make Work Pay'](#).
8. 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 relation to trade union matters and industrial action. It further creates new mechanisms for the enforcement of employment law.
9. The Bill, as introduced, contained 119 clauses and 7 Schedules. 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 the Adult Social Care Negotiating Body.
 - 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, 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.

10. 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.
11. 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 Relations. In addition, clauses 28 to 44 apply only in relation to England.
12. 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 the first Legislative Consent Memorandum

13. I wrote to the Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets, Justin Madders MP, on 29 October.
14. In my letter, I welcomed the inclusion of clause 25 of the Employment Rights Bill, which protects the terms and conditions of workers being transferred when contracts are outsourced and other workers employed on such contracts.
15. I noted that a similar code, commonly known as the "Two-tier Code" has been in place in Wales as guidance since 2014. I also highlighted that the Social Partnership and Public Procurement (Wales) Act 2023 places a duty on Welsh Ministers to prepare and publish a code of practice about employment and pensions matters related to outsourcing services contracts.
16. I indicated a potential inconsistency given that the duty in the Social Partnership and Public Procurement (Wales) Act applies only to those bodies listed in Schedule 1 of that Act and does not cover several bodies defined as devolved Welsh authorities in the Procurement Act 2023. Clause 25 of the Employment Rights Bill, as originally drafted, would also exclude those devolved Welsh authorities not listed in Schedule 1.
17. To ensure a consistent approach and avoid the creation of a potentially anomalous position, I requested the UK Government consider an amendment to clause 25 of the Employment Rights 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 Procurement Act 2023 but not listed in Schedule 1 to the SPPP Act.

18. I received a reply from the Parliamentary Under-Secretary of State on 29 November. He noted the points raised and confirmed the UK Government would seek to amend the Bill as requested during the Commons Committee stage. The resulting amendments to clause 25 (Government amendments 59 to 64) is currently being considered by Committee.

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

19. 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:

UK Government amendments 59 to 64 replace clause 25 with re-worked provisions on the same subject-matter (protection of workers from detrimental treatment as a result of outsourcing).

These amendments would restructure the new provisions to be inserted into the Procurement Act 2023 so that the powers previously vested only in the Secretary of State would now also be conferred on the Scottish Ministers and Welsh Ministers in respect of devolved Scottish and Welsh authorities respectively. The amendment also clarifies that the duty to publish a code of practice does not depend on the making of the regulations.

The practical effect in relation to Wales is to give powers to 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 publish a code of practice on related matters. These new provisions will apply to those organisations defined as devolved Welsh authorities in the Procurement Act 2023 but not listed in Schedule 1 to the SPPP Act.

20. Consent is required for these provisions because they contain provision for a purpose within the legislative competence of the Senedd and therefore have regard to devolved matters. They also confer executive powers on the Welsh Ministers which invariably affect devolved matters.
21. The first Legislative Consent Memorandum was laid in relation to clause 25 in addition to other provisions. UK Government amendments 59 to 64 replace this clause as originally drafted with a new version which confers executive powers on the Welsh Ministers (the previous version of the clause did not).

UK Government view on the need for consent

22. As I set out in the first Legislative Consent Memorandum, the UK Government accepted that the Senedd's consent is required for clause 25. The UK Government has not stated its view on the need for consent in relation to the amendments described above.

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

23. The Welsh Government supports the Employment Rights Bill. These amendments to the Bill have been made on my request. These amendments facilitate a consistent approach to the protection of workers from detrimental treatment as a result of outsourcing. This includes consistency in public bodies within scope in relation to relevant provisions in the Employment Rights Bill, the Social Partnership and Public Procurement (Wales) Act 2023 and the Procurement Act 2023.

Financial implications

23. The Workforce Code (commonly known as the Two-tier Workforce Code) has been in place as guidance in Wales for ten years. However, we have not undertaken an analysis of the extent to which it has been applied. There could be some higher employment costs, but as a Code has already been in place in Wales as guidance, it is difficult to estimate additional costs that may arise through future safeguarding against an erosion of terms and conditions when services are outsourced.
24. Some Welsh bodies, including the universities, were not included in the remit of the 2014 Code and so it could be argued that protecting workers in outsourced contracts represents new costs for those bodies. However, it is not known whether these bodies are intending to outsource any of their services in the future, so the financial implications of protecting workers cannot be calculated with any degree of accuracy.

Conclusion

25. 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. The amendments to the Bill have been made at my request to facilitate greater consistency in this area of legislation. Therefore, I recommend that the Senedd supports the proposals and gives its consent.

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