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

### **Welsh Government response to the Legislation, Justice and Constitution Committee's report**

**July 2025**

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The Employment Rights Bill ("the Bill") was introduced in the House of Commons on 10 October 2024. Certain elements of the Bill require the legislative consent of the Senedd, and on 5 December 2024, the Welsh Government laid a Legislative Consent Memorandum for the Bill before the Senedd. This was followed by supplementary LCMs in respect of certain UK Government amendments to the Bill, laid on 19 December 2024, 1 April 2025 and 8 July 2025.

On 26 March 2025, the Legislation, Justice and Constitution Committee ('LJCC') published a report on Memorandum No. 1 (laid on 5 December) and Memorandum No. 2 (laid on 19 December). The Welsh Government responded to the LJCC on 30 April 2025.

On 19 June 2025, the LJCC published a report on Memorandum No. 3 (laid on 1 April).

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## Responses to recommendations

This response addresses the five conclusions and eight recommendations of the Report and uses the clause numbering in the version of the Bill brought from the House of Commons to the House of Lords.

**LJCC 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:**

No response required.

**LJCC 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.**

### Welsh Government response

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Please see the response to Recommendation 1.

**LJCC 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.**

### Welsh Government response

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Please see the response to Recommendation 3.

**LJCC 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.**

### Welsh Government response

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Please see the response to Recommendation 6.

**LJCC 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.**

### Welsh Government response

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As set out in Memorandum No. 3, the UK Government tabled amendments to the Employment Rights Bill enabling the creation of a Social Care Negotiation Body for Wales. These amendments were tabled at the Welsh Government's request and followed dialogue held at both official and ministerial level. This includes the meetings between Welsh Ministers including the Counsel General, and 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, which are referenced at paragraph 13 of Memorandum No. 3. In addition, there has been interministerial correspondence between the Minister for Culture, Skills and Social Partnership, the Minister for Children and Social Care, and their UK Government counterparts.

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

**Welsh Government response**

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Response: Accept

The Welsh Government appreciates the Committee's consideration of this matter and the conclusion that clause 151 contains provision which requires the consent of the Senedd in accordance with Standing Order 29. On reflection, the Welsh Government agrees with the Committee's conclusion, and we laid an SLCM in respect of clause 151 on 8 July 2025.

**LJCC Recommendation 2 – The Minister should provide information about the discussions he has had with the UK Government about clause 151 and accordingly the UK Government's view on how it intends or could exercise the powers in devolved areas.**

**Welsh Government response**

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Response: Accept

The Welsh Government has maintained frequent and regular engagement with the UK Government on the Employment Rights Bill, at both official and ministerial levels. These discussions have covered the Bill in its entirety, including specific provisions such as those relating to the Social Care Negotiation Body, as well as UK Government amendments. The UK Government has indicated it would approach the use of clause 151 cautiously and respectfully and that it would not seek to use it to override Senedd legislation unnecessarily or inappropriately.

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**LJCC 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.**

**Welsh Government response**

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Response: Reject

The Welsh Government does not share and publish its legal advice relating to matters of legislative competence. However, to assist the Committee, the Welsh Government considers that it would not be possible to provide a definitive legal position on this topic without first developing relevant draft provisions and undertaking a full legislative competence analysis of them. This process would require very considerable resource which would be disproportionate in the circumstances and could not be completed before the Employment Rights Bill completed its passage through Parliament. Further, if the decision was made not to have Wales included in the social care provisions of the Employment Rights Bill and it was later concluded that the Senedd could not adequately replicate those provisions, the delay involved would mean that the chance to take advantage of the Employment Rights Bill would have been lost. This would mean that the social care workforce in Wales would be significantly disadvantaged in not being within scope of the social care provisions of the Employment Rights Bill. We share the objectives of the Employment Rights Bill, and it is pragmatic in the interests of speed, efficiency and delivering tangible benefits to the social care workforce without delay, to seek provision through the UK Bill. The Scottish Government has reached a similar conclusion in its approach.

**LJCC 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.**

**Welsh Government response**

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Response: Accept

The same policy rationale that underpinned our support for the consent requirement applies here. That is, we strongly support the creation of the Body, we believe it is essential for Wales, and we took the pragmatic decision to use the framework provided by the Employment Rights Bill. Given the limited recent history of sectoral collective bargaining anywhere in the UK, the Social Care

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Negotiating Body and Fair Pay Agreements represent a wholly new model. Since we are entering uncharted territory, it is essential that we retain the flexibility as to the timing of the establishment of the Social Care Negotiating Body. For this reason, secondary legislation is more appropriate than primary legislation, as it allows us to more effectively involve stakeholders before and during the establishment of the Social Care Negotiating Body.

**LJCC 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.**

**Welsh Government response**

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Response: Accept

The Welsh Government is not pursuing a non-Government amendment in the House of Lords to remove the consent requirement. As explained in evidence provided to the Health and Social Care Committee, while we remain of the view that the requirement is neither necessary or justified, and that the approach should not be repeated elsewhere, we feel we have exhausted all reasonable avenues to challenge it. This has included sustained engagement with UK Government through Ministerial correspondence, Ministerial-level meetings and numerous discussions at official level. We remain of the view that the policy rationale for extending the Employment Rights Bill provisions to Wales, specifically in relation to the establishment of a Social Care Negotiating Body, is compelling. The UK Government remains firm in their position that the consent requirement is necessary to safeguard the employment rights reservation. While we do not share their view, we have reluctantly accepted the consent requirement given the prospect of the social care sector in England and Scotland proceeding with stronger pay, terms and conditions than those in Wales.

**LJCC 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.**

**Welsh Government response**

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Response: Accept

We believe that any detailed analysis of the potential impact of establishing the Social Care Negotiating Body will be better informed by the consultation and

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engagement we have committed to undertake with the sector in Wales prior to laying any regulations. Given the speed at which the Employment Rights Bill has progressed, and the fact that we have not been in control of that timetable, there was simply no opportunity to carry out a full impact assessment before needing to decide whether to seek the extension of the relevant provisions to Wales. We have acted pragmatically to ensure the social care workforce in Wales is not left behind, and disadvantaged compared to England and Scotland.

**LJCC 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.**

**Welsh Government response**

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Response: Accept

All the powers of the Welsh Ministers to make subordinate legislation dealt with in Memorandum No. 3 are contained within Chapter 2 of Part 3 of the Bill ('the Social Care Chapter').

Clause 50 (Regulations under this Chapter) makes provision about the procedure to which regulations made using powers in the Social Care Chapter are to be subject. Clause 50(2) provides that regulations under section 43 (Power to ratify agreements) are subject to the "negative resolution procedure". Clause 50(3) provides that regulations under any other provision of Chapter 2 of Part 3 are subject to the "affirmative resolution procedure".

For completeness, clause 153(5)(b) provides that any regulations made by the Welsh Ministers under the Bill which are subject to the "negative resolution procedure" are subject to annulment in pursuance of a resolution of the Senedd. Clause 153(6)(b) provides that any regulations made by the Welsh Ministers under the Bill which are subject to the "affirmative resolution procedure" may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Senedd.

**LJCC 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.**

**Welsh Government response**

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Response: Reject

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It is a longstanding practice for Welsh Ministers to consult on draft regulations prior to making them. In line with this, we are committed to consulting and engaging with the sector and other stakeholders on the detail of the Social Care Negotiating Body. We have already been using our existing social partnership structures, including the Social Care Fair Work Forum, to keep stakeholders informed of progress. Stakeholders represented on the Forum are broadly supportive of the approach. We will continue to do so as the work develops. We also commit to undertaking a formal consultation before laying regulations to establish the Social Care Negotiating Body.

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