



The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Employment Rights Bill Response to the Health and Social Care Committee

August 2025

Summary

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 (LCM) 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'), the Equality and Social Justice Committee ('ESJC') and the Economy, Trade and

Rural Affairs Committee (ETRAC) 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 three committees on 30 April 2025.

On 19 June 2025, the LJCC published a report on Memorandum No. 3 (laid on 1 April). The Welsh Government responded to the LJCC on 15 July 2025.

LCM No. 3 was laid before the Senedd on 8 July 2025. The LCM was debated in Plenary on 15 July. After the debate, the motion went to the vote and received 27 votes in favour, 10 abstentions and 13 votes against, therefore the motion was passed.

On 17 July 2025, the Health and Social Care Committee published a report on Memorandum No. 3 (laid on 1 April).

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1. Response to issues raised by the Committee

This response addresses the one conclusion and seven 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.

HSCC Conclusion 1 - A majority of the Committee sees no reason that the Senedd should not support Supplementary Legislative Consent Memorandum No. 3 for the Employment Rights Bill.

No response required.

HSCC Recommendation 1 - The Minister for Children and Social Care should set out why she believes it is appropriate for the establishment of a Social Care Negotiating Body for Wales to be delivered via regulations.

Response: Accept

We strongly support the creation of a Social Care Negotiating Body for Wales and have taken the decision to use the framework provided by the UK Employment Rights Bill. The Welsh Government considers the Bill to be the most coherent and effective way to deliver these provisions, ensuring parity of rights for the social care workforce across England, Scotland, and Wales.

Given the limited recent history of sectoral collective bargaining anywhere in the UK, the Social Care Negotiating Body and Fair Pay Agreements represent a wholly new model. As we navigate unfamiliar ground, it's important to maintain flexibility around when the Social Care Negotiating Body is established. This is why regulations are appropriate, as it enables more effective engagement with stakeholders throughout the process of setting up the Body.

The establishment of a Negotiating Body for Wales reflects our continued commitment to addressing pay issues in the social care sector. Fair Pay Agreements have the potential to bring meaningful improvements to pay, terms, and conditions, and represent a further step in our ambition to support and strengthen the social care workforce.

HSCC Recommendation 2 – The requirement for the Welsh Ministers to obtain Secretary of State consent before exercising its regulation-making powers under new clause 36 should be removed from the Bill, and the Welsh Government should pursue all the options available to it to ensure this is done, including continuing to press the UK Government for its removal.

Response: Accept in principle

We consider the requirement in the Bill for the Secretary of State's consent on any use of powers related to the functions of the Welsh Social Care Negotiating Body, including the approval of draft agreements, to be unnecessary and unjustified. This issue has been raised repeatedly at both official and ministerial levels. However, we feel that we have exhausted all reasonable avenues to challenge it.

The UK Government remains firm in their position that the consent requirement is necessary to safeguard the employment rights reservation. Whilst we do not agree, we have taken the decision to reluctantly accept the consent requirement when balanced with the needs and best interests of our social care workforce, to ensure we are not faced with the prospect of England and Scotland proceeding with stronger pay, terms and conditions than those in Wales.

HSCC Recommendation 3 – The Welsh Government should keep the Committee updated on any developments with its request for a 'Schedule 7B carve out' relating to the requirement for Secretary of State consent in the exercise of powers under new clause 36.

Response: Accept

We informed the Committee previously that the Welsh Government had formally written to UK Government requesting the inclusion of provision to disapply relevant restrictions under Schedule 7B of the Government of Wales Act 2006 in relation to the social care provision of the Bill. Such provision would have enabled the Senedd to remove the consent requirement at a later date without the consent of the Secretary of State.

The UK Government has responded to our request and declined, stating that the powers being granted to Welsh Ministers fall within areas that are reserved. Because of this, they believe the inclusion of a consent requirement is necessary and do not consider it appropriate to remove these powers from the restrictions outlined in Schedule 7B.

HSCC Recommendation 4 – The Minister for Children and Social Care should write to us to set out the reasons given by the UK Government for maintaining the requirement for the Welsh Ministers to obtain the consent of the Secretary of State in exercising their regulation-making powers under new clause 36.

Response: Accept

Despite the Welsh Government's representations, the UK Government continue to maintain that the provisions relating to the Social Care Negotiating Body have a dual purpose as they relate to both reserved (employment rights) and devolved (social care) matters. The UK Government position is that all powers conferred on Welsh Ministers by these clauses should be subject to a requirement to obtain the consent of the Secretary of State so as to uphold the reservation for employment rights and industrial relations.

HSCC Recommendation 5 – The Minister for Children and Social Care should write to us on a six-monthly basis to provide an update on the progress of discussions with the UK Government about the funding that will be made available for the implementation of the provisions in the Bill that are the subject of Memorandum No. 3.

Response: Accept

The Welsh Government has been clear that funding will be critical for the delivery of Fair Pay Agreements in the future. However, the UK Government has not yet confirmed the funding arrangements for England and the consequences of that for the devolved governments. We will continue to press and update the Committee accordingly.

HSCC Recommendation 6 – The Minister for Children and Social Care should write to us within 6 months to set out the processes the Welsh Government will follow in setting up working groups for the establishment of a social care negotiating body for Wales, and a timeline for this work.

Response: Accept

The Welsh Government already has established partnerships with trade unions, employer representatives and government bodies through the Social Care Fair Work Forum. This existing infrastructure places us in a strong position for engagement, and we intend to build on these well-established partnerships in the first instance.

Since the passing of the Legislative Consent Motion on 15 July, the Minister for Children and Social Care has written to the Social Care Fair Work Forum to request their engagement in shaping and influencing the work to develop a Social Care Negotiating Body for Wales, and this will be an agenda item at their next meeting in September.

We will update the Committee accordingly once a plan for engagement, including a more formal consultation with the sector, has been developed.

HSCC Recommendation 7 – The Minister for Children and Social Care should update the Committee periodically on discussions within the GB Working Group about the establishment of negotiating bodies for social care in the three nations, and any agreements arising from those discussions.

Response: Accept

The GB-working group between the three governments has already been established to support the coordination of Fair Pay Agreements policies for social care workers in England, Scotland and Wales and help mitigate any issues that could arise for cross-border workers and employers because of separate Fair Pay Agreements. As outlined previously, we are content to provide updates to the Committee on progress.