

Written submission from Social Work Scotland, 12 May 2025

Health, Social Care and Sport Committee Employment Rights Bill supplementary Legislative Consent Memorandum (LCM)

Social Work Scotland is grateful for this opportunity to comment on the Employment Rights Bill Legislative Consent Memoranda, informing the scrutiny of the Health, Social Care and Sport Committee.

In respect of the general principles and objectives that the Legislative Consent Memoranda (LCM) are seeking to realise, we are supportive. Scotland's recent progress in extending and embedding Fair Work must be acknowledged and commended, but in respect of social care, it cannot be seen as the end-destination, or the solution to a workforce crisis that imperils the care and support of hundreds of thousands of people. Levels of pay and conditions of employment will need to be improved (beyond real Living Wage levels) to ensure social care roles are not just competitive with those in other sectors, but to the extent they attract (and retain) people into the sector in greater numbers. The provisions of the Employment Rights Bill ("the Bill") appear to provide mechanisms which could help achieve that, but without commitments from the Scottish Parliament and Scottish Government to significantly increase the resources available to local government (the providers and commissioners of social care) they will do little to improve the situation on the ground. Indeed if these changes lead only to higher costs for local government and individuals, the impact on the ground will be negative.

We also note that the provisions in the Bill, to which the LCM relate, leave Scottish Ministers with the responsibility for setting the parameters of, for example, the Social Care Negotiating Body's scope. Without clarity on Scottish Minister's intentions it is difficult to assess the impact of the proposals. Decisions about which social care "sectors" are in scope will make a big difference to both costs and the complexity of implementation.

Q.1 Plans to establish and negotiate legally binding agreements in the social care Sector

We support plans to establish a Social Care Negotiating Body but agree with other local government partners that it should not conflict with the existing collective bargaining structures in place for council / Health and Social Care Partnership staff. The groups in scope of the Negotiating Body need to be clearly defined. If local authority staff are included, the implications (Equal Pay, etc.) are very significant, and the Scottish Parliament

must be afforded the opportunity to scrutinise Minister's plans, and the financial assessment that accompanies them.

The proposal to establish a Social Care Negotiating Body, and more specifically the Bill's broad definition of "social care worker" has prompted several Social Work Scotland members to query whether "social workers" will be considered in scope. And if they are not, whether it is equitable for the social care professions to have a structure for national negotiation but not social work. This is especially true if the scope of the Negotiating Body is drawn to include council / public sector social care staff.

Q.2 Whether the Employment Rights Bill has additional implications for the children's services workforce in Scotland

The provisions of the Bill, to which the LCM relate, create a dilemma in respect of the children's services workforce. In part this is because the workforce does not fit easily into the definition of a "social care worker". Individuals can provide emotional and developmental care to children (in place of biological parents), formal learning / teaching, and many other responsibilities, alongside "personal care and other practical assistance". However, not including the children's services workforce risks exacerbating a divergence in the terms and conditions of those working in "social care" roles with adults and children. (Categories which are in themselves unhelpful, when it comes to having to transition from one set of services to another.) Social Work Scotland is among several organisations who have had to advocate in recent years to ensure Scottish Government investment in social care, for example around the living wage uplift, included children's services, or risk making retention and recruitment even more difficult for that sector.

It is also unclear, based on the information currently available, how the Employment Rights Bill will affect debates about the status (in employment law) of foster carers. The implications of those debates are considerable, from both a cost and delivery perspective, and it is important that Scottish Government and Scottish local authorities are fully apprised of the potential impacts of the Bill on this particular section of the workforce.

Q.3 Whether or not you think the Committee should recommend that the Scottish Parliament should approve the supplementary LCM

On the basis that we are supportive of the general objectives behind the relevant Bill provisions, we recommend approval of the supplementary LCM. However, we urge MSPs to make their decision based on further information from Scottish Government, explaining how they intend to implement a national Negotiating Body. While it is a potentially positive development, the implications are extensive and highly complex, and we do not support the extension of further powers to Ministers purely on the basis that it would be good to have them. Approval should be on the basis that we understand how those powers will be used.

While we acknowledge that modelling the financial impact of proposals is impractical at this stage, as too many variables remain unknown, it is highly likely that introduction of a Negotiating Body will lead to increased costs of social care (in pay inflation and improved terms and conditions). These will fall on local government directly, but indirectly on the Scottish Government budget. We believe it is reasonable for the Scottish Parliament to expect, before approving the LCM, for detail on how Scottish Ministers would meet any future investment recommended by the Negotiating Body.