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Health, Social Care and Sport Committee

Supplementary Legislative Consent Memorandum (LCM) on the Employment Rights Bill



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Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care.

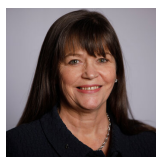


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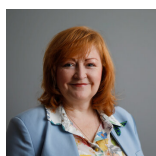
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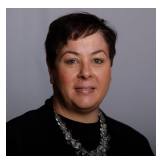
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Introduction

1. At its meetings on 20 & 27 May 2025, the Committee considered the [Supplementary Legislative Consent Memorandum](#) ("sLCM") lodged by the Scottish Government in respect of the [Employment Rights Bill](#) ("the Bill").
2. The Employment Rights Bill is a UK Government Bill introduced in the House of Commons on 10 October 2024. The Bill committee stage in the House of Commons began on 26 November 2024, report stage began on 11 March 2025, and it received its third reading on 12 March 2025. The Bill is currently at the Committee stage in the House of Lords.
3. The purpose of the Employment Rights Bill is to deliver the key legislative reforms set out in the UK Government's [Plan to Make Work Pay](#). The Bill's Explanatory Notes state its purpose is to:
 - ” update and enhance existing employment rights and make provision for new rights; make provision regarding pay and conditions in particular sectors; and make reforms in relation to trade union matters and industrial action. It further creates a new regime for the enforcement of employment law.
4. The Bill consists of six parts:
 - Part 1 provides for reform of employment rights including zero-hour contracts, flexible working, statutory sick pay and entitlements to leave.
 - Part 2 includes wider employment law reform of the procedure for handling redundancies, public sector outsourcing and employer equality duties.
 - Part 3 relates to the pay and conditions of school support staff in England, and the establishment of the Adult Social Care Negotiating Body.
 - Part 4 makes provisions in relation to trade unions and industrial action, including a right to a statement of trade union rights and the right for trade unions to access workplaces.
 - Part 5 provides for the Secretary of State to have the function of enforcing labour market legislation.
 - Part 6 sets out general provisions including extent and commencement.
5. The Bill would make provision for:
 - Improved rights for those on zero hours contracts.
 - Improved rights around flexible working.
 - Removing the three-day waiting period for statutory sick pay as well as the lower earnings limit test for eligibility.
 - Removing the qualifying period for paid family leave and expanding eligibility for bereavement leave.

- Expanding employers' duties to prevent harassment of staff.
- Expanding protection for workers from unfair dismissal by removing the two-year qualifying period, subject to a potential probationary period.
- Improving employment rights around the practise of "fire and rehire".
- Improving sectoral collective bargaining for school staff and adult social care.
- Introducing rights for trade unions to access workplaces and repealing the Strikes (Minimum Service Levels) Act 2023 and most provisions of the Trade Union Act 2016.
- Improving enforcement by bringing together powers of existing labour market enforcement bodies, along with some new powers, under the Secretary of State and enforcement officers.

Employment and industrial relations are reserved to the UK Parliament by Section H1 of Schedule 5 to the Scotland Act 1998.

6. An [earlier LCM](#) was lodged on 11 December 2024 by Shona Robison, Cabinet Secretary for Finance and Local Government, supported by Ivan McKee, Minister for Public Finance. The original LCM related to the devolvement of public procurement powers and covered provisions and powers relating to the contracting out of staff.
7. The [sLCM](#) was lodged by Neil Gray MSP, Cabinet Secretary for Health and Social Care, on 3 April 2025. The Health, Social Care and Sport Committee has been designated, by the Parliamentary Bureau, as lead committee to consider the sLCM and to report its views to the Parliament.
8. The sLCM relates to the provisions in the Bill concerning Social Care Negotiating Bodies, which are included within Chapter 2 of Part 3, with further consequential amendments in Schedule 5. The sLCM states:

” The policy objective of Chapter 2 is to introduce negotiated agreements in the social care sector. It seeks to do this by creating a framework, through various regulation making powers, for establishing and implementing a legally binding agreement which may be negotiated by a “negotiating body” made up of relevant employer and worker representatives, and other representatives as deemed necessary. This framework will allow for agreements to set out matters relating to pay and other terms for relevant workers in the social care sector.
9. It further states that “the policy objective of the extended provisions under Chapter 2 (alongside related amendments to clauses 153 and 155 and Schedule 7) is to enable Ministers to create a social care negotiating body in Scotland.” The sLCM lists numerous provisions which require the consent of the Scottish Parliament.
10. With respect to the sLCM, the Scottish Government recommends that legislative consent be given, setting out its commitment to fair work for social care workers and recognising that employment matters are reserved. It concludes:

” having a clear and unequivocal power conferred on Scottish Ministers to address this aspect of fair work through a Social Care Negotiating Body for Scotland would represent a significant development as regards the employment terms and conditions for this workforce.

11. Regarding devolved and reserved powers, the supplementary LCM states:

” ...although the subject matter of social care in Chapter 2 is devolved to the Scottish Parliament, it is recognised that this Chapter and its purpose sit within the reserved subject matter of employment rights and duties and industrial relations as set out in section H1 of Schedule 5 of the Scotland Act 1998.

It concludes:

” Following discussions between officials on the interaction of the two subject matters, it was also agreed that this approach would be the most appropriate way of recognising the UK Parliament’s employment rights reservation in relation to social care workers and industrial relations within the social care sector.

12. The supplementary LCM states that there has been no broad consultation on this Bill. It notes that the Minister for Mental Health, Wellbeing and Sport initiated engagement with the Fair Work in Social Care Group once details of the Adult Social Care Negotiating Body provisions of the Bill were announced in early November. While reporting general support for having an Adult Social Care Negotiating Body and the benefits of having a legislative underpinning, the group raised concerns around its flexibility and its scope, insofar as it excludes children's services.

Committee consideration

Economy and Fair Work Committee

13. The Economy and Fair Work Committee was the designated lead committee and considered the original LCM on 19 February and [19 March 2025](#). The Committee published its [report on the original LCM](#) on 16 May 2025.

Delegated Powers and Law Reform Committee consideration

14. The original LCM was considered by the Delegated Powers and Law Reform Committee (DPLRC) on [25 February 2025](#) and published its report on [4 March 2025](#).
15. The DPLRC considered the supplementary LCM on [13 May 2025](#) and published its report on [14 May 2025](#). The Committee noted that “the exercise of the powers conferred on Scottish Ministers by chapter 2 of the Bill may not be exercised without the agreement of the Secretary of State”. The Committee draws this to the attention of the Health, Social Care and Sport Committee as follows:

” The Committee draws the attention of the lead committee to the requirement for the agreement of the Secretary of State in the exercise of the delegated powers conferred on Scottish Ministers. It suggests to the lead committee it may wish to consider further how the agreement process will operate in practice in the developing of the Negotiating Body and its policies.

Health, Social Care and Sport Committee consideration

16. Ahead of oral evidence, the Committee sought written submissions on the sLCM and received the following submissions:
 - [COSLA](#)
 - [Glasgow City HSCP](#)
 - [Scottish Care](#)
 - [Scottish Social Services Council](#)
 - [Social Work Scotland](#)

The Coalition of Care and Support Providers in Scotland did not provide a written submission, but instead sent the Committee a [briefing](#) published in February in relation to the original LCM.

17. The Committee took oral evidence from the following organisations at its meeting on [20 May 2025](#):

- Coalition of Care and Support Providers in Scotland (CCPS).
- Scottish Care
- Scottish Trade Union Congress (STUC)

18. Members questioned to what extent the ability to have sectoral negotiation for adult social care would help embed fair work principles in the sector. Scottish Care noted the importance of giving further consideration to the definition of "negotiation":

” Firstly, I would come to the definition of whether it is sectoral or collective. At the moment there is disparity in what people who work in the independent sector...and what those working in the statutory sector can access due to the negotiation that currently exists. For instance, those working in the statutory sector have negotiated access to have their SSSC registration paid for.

So there is something about the definition of whether it is sectoral or collective that also applies within the LCM and whether or not we would have that parity with those who are outsourced.

The STUC welcomed that the issue of collective and sectoral bargaining appeared to be "high on people's agenda" and were positive around the developments that have taken place in recent years to build bargaining architecture within the sector. STUC agreed with Scottish Care that this is something that should be legislated for in the Bill.

19. CCPS emphasised the need for urgent action and intimated their concerns around the pace at which legislation is processed, arguing that it was undesirable to have to wait for statute to make improvements to social care workers' pay. They further highlighted that a model has been developed over the past 3 years which is "ready to go - on a voluntary basis - and doesn't require a statutory underpinning to get it up and running".

They reiterated concerns that the regulation-making process risked further delaying progress on fair work in the social care sector:

” We don't need the legislation to be in place to improve pay, terms and conditions for workers in the sector - we can move on that now.

Scottish Care informed the Committee that, over the course of the preceding 8 years of discussions around fair work in social care, rates of pay received by those working in the independent social care sector have actually fallen. They concluded:

” What that shows to me is there is a requirement to put this on a stronger footing - just having voluntary conversations won't make a difference in this space. At that time...care workers were receiving above the living wage, they are now receiving the living wage, and that is wholly unacceptable in our eyes.

20. CCPS further highlighted the importance, in addressing broader fair work principles, of ensuring that any model put in place is truly collaborative, consensual and voluntary - and that all parties are placed on an equal footing within that model,

whether they be the Scottish Government, trade unions, or employers.

21. The STUC then highlighted concerns with the drafting of the Bill prior to the lodging of amendments that triggered the supplementary LCM. It argued that, by applying to Scotland and Wales, the previous drafting would have limited the power of Scottish Ministers as they relate to procurement and delivery of social care .

They went on to welcome that this issue had now been addressed by those amendments lodged at Westminster which have triggered the supplementary LCM.

22. Scottish Care highlighted the pace at which legislation is being pushed through Westminster and expressed concern that this was happening without consultation. They highlighted that services in Scotland are mainly delivered locally, that needs in remote and rural areas of Scotland will differ, and that adequate consultation is necessary both in Scotland and Westminster for the legislation to be effective.

23. Members further queried what challenges could be associated with establishing a national negotiation body in the adult social care sector.

CCPS highlighted the disparate nature of the social care sector, arguing that this creates additional challenges of engaging with different providers across the sector, of ensuring all views are heard and that the organisational position within a negotiating body is suitably well informed.

They also highlighted the importance of ensuring that learning from other sectors is taken into account to help design the negotiating body and, in particular, that any body was tripartite in its structure - with the Scottish Government sitting alongside employers and trade unions during negotiations.

Scottish Care informed the Committee that the sector currently has low levels of trade union membership and highlighted the additional challenges this creates in giving staff an effective voice in any negotiations.

24. On the issue of trade union membership within the social care sector, STUC went on to argue:

” We would look forward to working with employers to see how we can increase trade union density in the sector, which is hard to organise due to its disparate nature. We're pleased to hear that the benefits of union membership and negotiations are recognised, but I want to return to the fact that the model we are talking about is the best way to do that...

...there is a very broad consensus around that. And to remind people that there is nothing within this LCM that should prevent that happening, nor happening immediately. There is nothing in this process that should slow down discussions which are taking place and ultimately the constitution for a negotiation body that we have been talking about.

25. Members queried whether passing the LCM would help expedite implementation of the models which have already been discussed and agreed, but are yet to be fully implemented.

CCPS argued that, in their view, the main obstacle to progress currently was the Scottish Government. They reiterated their fear that the introduction of this

legislation has slowed down progress and has resulted in the Scottish Government being reluctant to engage with trade unions and employers in the sector thus far.

26. The Committee took oral evidence from the Minister for Social Care, Mental Wellbeing and Sport, and Scottish Government officials, on [27 May 2025](#).

27. The Minister highlighted the ongoing work of the Fair Work and Social Care Group (FWSCG), noting an increase in investment in social care and that specific work-streams are underway to improve fair work within the adult social care sector in partnership with stakeholders. The Minister further stated:

” Work-stream 1 has enabled a minimum rate of pay for workers delivering direct care in commissioned social care services of at least the real living wage, and for annual uplifts to be delivered quickly into workers' salaries.

Work-stream 2 has developed a framework of proposed minimum terms and conditions reflecting fair work principles and initial priority areas to be progressed. Due to budget constraints, we are currently unable to implement these proposed minimum standards.

Work-stream 3 has developed an effective voice framework. The first phase of that delivery programme is being rolled out through a volunteer cohort of organisations from across the sector in Scotland, and it will undergo a comprehensive evaluation before progressing to national deployment.

Through work-stream 4, progress has been made around voluntary sectoral bargaining with key stakeholders. That work is really complex - there are over 1000 employers working in social care - but, once developed and introduced, it will help underpin improvements in pay and terms and conditions right across the social care workforce.

28. The Minister was then asked about representation on the Fair Work group. Officials responded that care providers were represented via CCPS and Scottish Care, that trade union representation included UNITE, Unison and GMB, and that the Scottish Government, regulators, and COSLA were also represented on the group. They added that the group also had the option of bringing in additional expertise, such as academics, as and if required.

29. Members then requested further details on those tripartite arrangements that had been agreed, in light of evidence from stakeholders that these were now ready to be implemented.

The Minister responded:

” Well, they are not quite ready to be implemented...we are still trying to achieve consensus on those but the evidence you have taken is absolutely correct, we have made massive progress. We are significantly ahead of where they are in the rest of the UK with this. Because we have been working for many years on this voluntary sectoral care bargaining tool, we are well ahead of other nations in the UK.

30. The Minister also highlighted the Scottish Government's determination to increase unionisation across the social care sector as a means of improving terms, pay and

conditions.

However, she went on to inform the Committee that trade union membership currently sits at around 20% of the workforce and this is concentrated amongst local government employees. On this basis, she went on to point out that a large percentage of the workforce is currently not represented by a trade union and emphasised the importance of capturing their voices in any discussions around fair work.

31. The Minister and her officials were then asked if they could define the differences between sectoral bargaining and collective bargaining.

Martin Reid, Unit Head for Adult Social Care Workforce and Fair Work responded:

” Sectoral bargaining in simple terms is what it says on the tin - you look at the entirety of the sector. In this particular case, we are developing sectoral bargaining for commissioned services, so not services delivered by local authorities...

Collective bargaining is a much more localised arrangement - so you could have collective bargaining between a management team and a single organisation. A care home, for example, which was totally independent, they could have a negotiation which would take account of sectoral bargaining, and whatever sectoral bargaining might say you should deliver, but your local collective bargaining could in theory go beyond that. There is nothing we're doing around sectoral bargaining that prevents those localised arrangements being used - so you could locally introduce better pay and conditions if you wish. The two things don't prevent each other from operating in the same space.

The Minister further clarified that a sectoral bargaining arrangement is already in place which covers local government staff in the totality, which includes social care staff directly employed by local government. On this basis, she indicated that, to date, more focus was being given to agreeing sectoral bargaining in commissioned services.

32. The Committee queried whether any cost analysis of sectoral bargaining and fair work arrangements had been done. The Minister and her supporting officials stated that work has been done to give an indicative cost for introducing the policies, and that they would be able to provide further information on costings to the Committee. However, at time of writing, this has not yet been provided.
33. The Minister concluded by stating that the Scottish Government welcomed the introduction of the Employment Rights Bill and, on this basis was recommending that the supplementary LCM should be approved, arguing that the Bill, once enacted, would give the Scottish Government an opportunity to then decide whether it wished to pursue a voluntary or statutory model:

” The Scottish Government welcomes the introduction of the Employment Rights Bill, particularly this part we're discussing today. I'm very very positive about it. I think it's a real step forward. What we need to do is spend time working with the sector and bottom out what exactly people in Scotland would prefer - whether that be voluntary arrangement or statutory underpinning - but I am delighted we have the option of both, and that's what this LCM gives us.

It doesn't mean we have to introduce one option over the other. I think we've done a great deal of work towards the voluntary arrangement...so I don't want to lose the progress on that, but do I want to have the option of both? Absolutely, and that's why I'm recommending approval.

Conclusion

34. The Committee recommends that the Parliament agree to a legislative consent motion in similar terms to the draft motion included in the supplementary LCM.ⁱ

ⁱ Sandesh Gulhane and Brian Whittle dissent from this recommendation.

