

Health, Social Care and Sport Committee
Tuesday, 20 May 2025
15th Meeting, 2024 (Session 6)

Employment Rights Bill: Supplementary Legislative Consent Memorandum - Note by the Clerk

Introduction

1. The [Employment Rights Bill](#) is a UK Government Bill introduced in the House of Commons on 10 October 2024.
2. 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. An 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](#).
4. On 17 December 2025, the Economy and Fair Work Committee was [designated by the Parliamentary Bureau](#) as lead committee to consider the LCM and report its views to the Parliament. The Committee took evidence on the LCM from Ivan McKee, Minister for Public Finance, and supporting officials, on [19 March 2025](#). During that evidence session, the Committee noted that, since the LCM was lodged, amendments had been tabled to the Bill in the UK Parliament which would broaden the potential impact of the Bill on areas of devolved competence, and that, as a result, the Scottish Government intended to lodge a supplementary LCM. The Committee agreed to note the LCM, in anticipation of a supplementary LCM being lodged.
5. The Delegated Powers and Law Reform Committee (DPLRC) considered the original LCM on [25 February 2025](#) and published its report on [4 March 2025](#). The Committee noted that:
 - The Bill is mainly dealing with wholly reserved matters such as employment law, industrial relations and employer equality duties.
 - Clause 25 seeks to confer a power on Ministers of the Crown to make regulations to protect workers in public sector outsourcing contracts by inserting a new section 14A into the Procurement Act 2023. This clause has been amended by the UK Government to extend this power to Scottish and Welsh Ministers.
 - Procurement is considered a devolved matter, and the UK 2023 Act has limited application in Scotland, extending only to procurements by the UK Government, UK-wide or public bodies with cross-border functions and to Scottish public authorities with reserved functions.

- DPLRC considered three powers that the bill would confer on Scottish Ministers, and concluded it was content with these powers.
6. [A supplementary LCM](#) was lodged by Neil Gray MSP, Cabinet Secretary for Health and Social Care, on 3 April 2025.
 7. The Health, Social Care and Sport Committee has been designated, by the Parliamentary Bureau, as lead committee to consider the supplementary LCM and to report its views to the Parliament.
 8. 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.”

Employment Rights Bill

9. 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](#).
10. 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.”
11. 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.

12. 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.

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

The Scottish Government's Supplementary Legislative Consent Memorandum

14. The supplementary LCM 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 supplementary LCM 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."

15. 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 LCM lists numerous provisions which require the consent of the Scottish Parliament.

16. With respect to the supplementary LCM, 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.”

Powers

17. 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.”

18. 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.”

Consultation

19. 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.

Health, Social Care and Sport Committee scrutiny

20. Ahead of today’s evidence session, the Committee requested written views from a number of organisations on the supplementary LCM and received the following submissions:

- COSLA - [Employment Rights Bill supplementary LCM - COSLA Response](#)

- Glasgow City HSCP - [Employment Rights Bill supplementary LCM - Glasgow City HSCP Response](#)
- Scottish Care: [Employment Rights Bill supplementary LCM - Scottish Care Response](#)
- Scottish Social Services Council - [Employment Rights Bill supplementary LCM - SSSC Response](#)
- Social Work Scotland: [Employment Rights Bill supplementary LCM - SWS Response](#)

21. 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: [Briefing-Potential-Impacts-of-the-Employment-Rights-Bill-on-the-Not-For-Profit-Social-Care-Workforce-in-Scotland.pdf](#)

22. The Committee will take oral evidence on the supplementary LCM at its meetings on 20 and 27 May 2025. At the first meeting, the Committee will take evidence from selected stakeholder organisations. The Minister for Social Care, Mental Wellbeing and Sport and supporting officials will give evidence at the second meeting.

Today's Meeting

23. At the meeting today, the Committee will take evidence from representatives of the following organisations:

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

Clerks to the Committee
May 2025