

Written submission from COSLA, 12 May 2025

Health, Social Care and Sport Committee

Employment Rights Bill supplementary Legislative Consent Memorandum (LCM)

COSLA welcomes the opportunity to respond to the Scottish Parliament's Health, Social Care and Sport Committee's request for information in relation to the Employment Rights Bill Legislative Consent Memorandum (LCM).

Scottish Local Government is supportive of, and committed to, Fair Work principles and ensuring fair pay, terms and conditions across the workforce. COSLA is clear that the establishment of any new Social Care Negotiating Body in Scotland should not cut across existing Local Government collective bargaining structures and should not include council employees within its scope. Any additional costs which are incurred by or passed on to local authorities as a result of changes to pay or terms and conditions would need to be fully funded by the Scottish Government.

It is crucial that the implications and potential risks around the provisions contained within the LCM are fully considered, and that further clarity is provided on the intended exercise of these provisions in Scotland, should legislative consent be approved.

Commitment to Fair Work Principles

Scottish local authorities are supportive of Fair Work principles and ensuring fair pay, terms and conditions for employees across our workforce, including those working in social care. Councils seek to reflect Fair Work principles as employers, evidenced through strong terms and conditions packages (including in relation to key entitlements, pension, etc); embedded trade union recognition and collective bargaining arrangements; and the aspiration to reach a £15 per hour minimum rate of pay.

A workforce which is appropriately valued and empowered is essential to the delivery of quality care services. Local Government is supportive of efforts to improve pay, terms and conditions of staff employed by commissioned service providers, in the third and private sectors, including through collective bargaining mechanisms. Social care workers deserve appropriate recognition and reward for the skilled role they perform, with attractive pay, terms and conditions. COSLA has worked in close partnership with Scottish Government and providers in recent years to implement policies and funding to support payment of the real Living Wage to social care, children's services, and ELC workers delivering commissioned services.

Funding for Fair Work initiatives to date has been irregular, which has impacted the ability to make desired progress, **Enhanced, consistent and sustained national resourcing is essential to effectively realising Fair Work and delivering increased pay, terms and conditions for Scotland's social care workforce.**

Impact on Existing Collective Bargaining Structures

The Employment Rights Bill definitions of “social care” and “social care worker” (section 39) are drawn broadly and appear to encompass all social care workers, including those employed in the public and commissioned sectors.

Scottish Local Government has long-standing, established collective bargaining arrangements in place. COSLA delivers the Employers’ Function on behalf of all 32 councils, and via these structures, engages in collective bargaining of pay, terms and conditions with our recognised trade unions. There are four Local Government bargaining groups which together cover all employees of Scotland’s 32 councils (over 240,000 people) – the Scottish Joint Council (SJC); Scottish Negotiating Committee for Teachers (SNCT); Scottish Joint Negotiating Committee for Chief Officials; and Scottish Joint Negotiating Committee for Craft Operatives.

Social care workers who are directly employed by councils are covered by the SJC, which makes collective agreements on pay, terms and conditions for such workers as well as employees across hundreds of other council services (i.e. waste and recycling, school support staff, etc).

COSLA is clear that any new sectoral arrangements (i.e. a Social Care Negotiating Body) which could be established by Scottish Ministers under the Employment Rights Bill should not cut across existing bargaining arrangements for directly employed Local Government workers – the scope of any new arrangement that is established should therefore exclude Local Government employees.

COSLA is clear that there would be significant risks to councils if directly employed council employees were to be covered by a sectoral arrangement. This includes a significant risk with regards to equal pay claims from members of the workforce – as terms and conditions of directly-employed social care staff could (as a result of ratified binding agreements made by the sectoral Negotiating Body) become unaligned with other Local Government employees in other services, who have been evaluated and graded at the same level as social care workers, per local job evaluation processes. This could pose legal and industrial relations risks as a result of discrepancy of treatment across the workforce, which could incur costs and reputational damage. Members of the Local Government workforce could feel de-valued compared with colleagues in other services. There would be related risks in relation to the integrity of local job evaluation schemes and processes, and local pay and grading schemes, which could be undermined and may require redesign. This includes the potential for erosion or loss of differentials between roles, if, for example, line managers within social care services were not within scope (so would not benefit from potential improvements in pay or terms and conditions), but those they managed would benefit.

COSLA anticipates that such issues could arise even if a Social Care Negotiating Body in Scotland worked to set minimum entitlements, allowing individual employer and union collective bargaining to continue to take place to agree more favourable terms (as has been stated would be the case in England – see UK Government [factsheet](#)). There is a risk that agreements could be reached by the sectoral body on pay which does not consider the wider reward packages available to local authority staff, therefore potentially

leading to provisions which were unaffordable to councils (for example through increased on-costs as a result of Local Government defined benefit pension entitlement). As set out below, any liabilities that were created through a national bargaining arrangement would require to be funded by Scottish Government.

As per paragraphs 30-32 of the LCM, the terms of ratified agreements (regarding remuneration and other conditions) would legally become part of workers' contracts, superseding existing contractual terms, as a matter of law under the Employment Rights legislation. Setting contractual terms via legislation as opposed to the regular process of collective agreement is not the norm and, should directly employed council staff be in scope, would again differentiate social care workers from the remainder of Local Government staff, creating a complex contractual and industrial relations environment. COSLA is particularly concerned that in the absence of an agreement through the Negotiating Body, Scottish Ministers would still be able to impose terms and conditions changes via regulations, binding the relevant employers as a matter of law. We believe this would risk ceding ownership and authority over bargaining and the setting of pay, terms and conditions, to central government to an inappropriate extent, undermining collective processes and the autonomy of employee representatives (i.e. trade unions) and employers.

The approach set out in the LCM does not take into account, and would risk undermining, the extensive work and progress that has been made, via collaboration with key stakeholders across the sector through the Scottish Government's Fair Work in Social Care workstreams, to develop a consensual framework for sectoral bargaining in Scotland for social care that would cover workers in the commissioned sector (excluding council employees, in light of existing Local Government bargaining arrangements).

COSLA also believes that, in line with the principles and spirit of the [Verity House Agreement](#), precautions should be taken to avoid complicating or cutting across existing Local Government bargaining structures and processes, which are already functioning successfully to deliver fair pay, terms and conditions agreements for Local Government employees.

COSLA would welcome clarity on the Scottish Government's intentions regarding the scope of any Social Care Negotiating Body and confirmation that Local Government employees will not be within scope. If, under the legislative provisions, it would not be possible for Scottish Government to exercise the power to establish a Social Care Negotiating Body in Scotland in a way that excludes Local Government staff – COSLA's view is that the Scottish Parliament should not approve the LCM.

Funding and Financial Implications

Future costs that may arise as a result of bargaining processes under a new sectoral body are unknown at present. Should Scottish Ministers proceed with introducing such an arrangement, there could be significant financial implications for councils, should a Social Care Negotiating Body for Scotland ratify agreements which result in changes to pay, terms and conditions for social care workers, be they employed in Local Government, or within commissioned third and independent sector providers (through increased contract

costs). There is a question around how the implementation of any changes to pay, terms and conditions of workers employed by commissioned providers would be managed locally.

Any uplifts in pay, terms and conditions would require additional funding from Scottish Government to be delivered, noting the stark financial and budgetary challenges facing councils.

Whilst Local Government received additional uncommitted revenue funding of £289m within the Local Government settlement 2025/26, the costs of the changes in Employers' National Insurance contributions from April 2025 (for which Local Government expects to receive funding to cover only 60% of the additional costs for directly employed staff, not including costs associated with commissioned services) far outstrip this additional resource. This, coupled with pressures relating to pay, inflation and demand, means councils continue to face unprecedented financial and budgetary challenges and increasingly difficult decisions about what they can afford to deliver.

Without additional funding, there could also be implementation costs for commissioned providers who could terminate contracts resulting in service disruption.

On the question of protection of workers involved in public sector outsourcing under a "relevant outsourcing contract", within the original LCM, whilst COSLA supports increased protections and improvement of terms and conditions for the workforce, there are serious concerns as to how this will be costed and if this would result in additional financial pressures on councils to bridge funding gaps.

Clarity is required, including implications for Children's Services

COSLA would welcome clarity from the Scottish Government on their intentions relating to the matters raised in this submission, should legislative consent be approved – particularly confirmation that the scope of any Social Care Negotiating Body will exclude directly employed Local Government staff and assurance about funding to deliver any future uplifts in pay, terms and conditions.

Clarity is also sought from Scottish Government on the question of whether children's services would be within scope in Scotland (given the definitions at section 39 of the Bill). If so, it will be important to ensure this group of staff is defined clearly in terms of which specific types of services for children and young people would be covered, and which would not (for example, the position for early learning and childcare). Should children's services be included, the complexities, issues and challenges outlined in this submission would apply to a larger proportion of Local Government employees and services.

COSLA is committed to working with the Scottish Government on a partnership basis, in line with the Verity House Agreement, to consider and address the issues raised.