

Supplementary Legislative Consent Memorandum

Employment Rights Bill

Background

1. This supplementary Legislative Consent Memorandum (LCM) has been lodged by Tom Arthur MSP, Minister for Social Care and Mental Wellbeing, under Rule 9B.3.1(c) of the Parliament's Standing Orders.
2. As a supplementary memorandum, it should be read in conjunction with the Scottish Government's [previous memorandum](#) on the Bill (LCM-S6-53 dated 11 December 2024), and further [supplementary Legislative Consent Memorandum](#) (LCM-S6-53a dated 3 April 2025).
3. The Employment Rights Bill was introduced in the House of Commons on 10 October 2024. The latest version of the Bill, Explanatory Notes, and other supporting documents can be found at [Employment Rights Bill - Parliamentary Bills - UK Parliament](#).
4. This is the third LCM for this Bill, and recommends consent for amendments tabled on 7 July 2025 to clauses 44 to 46, and 49. The amendments to clauses 44 and 45 are intended to prevent the remuneration of workers being adversely affected by an agreement of any Social Care Negotiating Body for Scotland, and do not prevent an employer from offering more favourable terms and conditions than those provided for by an agreement. The amendments to clause 46 ensure that, where regulations made by the Scottish Ministers under clause 46 provide for a failure to comply with guidance or a code of practice issued in terms of those regulations, the guidance or code of practice must be laid before the Scottish Parliament. The amendment to clause 49 is consequential.

Content of the Employment Rights Bill

5. The purpose of the Employment Rights Bill is to deliver the key legislative reforms set out in the UK Government's [Make Work Pay](#). The Bill therefore seeks 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. In addition, the Bill creates a new regime for the enforcement of employment law. Further information about the Bill can be found in the original LCM [Legislative Consent Memorandum](#).
6. As with the previous supplementary LCM dated 3 April 2025, this supplementary LCM relates to the provisions on Social Care Negotiating Bodies, which are included within Chapter 2 of Part 3 of the Bill.

7. Six amendments tabled on [7 July 2025](#) by the UK Government seek to adjust the provisions in Chapter 2 of Part 3 of the Bill by making further provision in relation to Social Care Negotiating Bodies for Scotland, England and Wales. This LCM is concerned with those amendments as they relate to Scotland.

Provisions which require the consent of the Scottish Parliament

8. Although these are amendments to regulation making powers of the Scottish Ministers which are being created in this Bill for the establishment of a Social Care Negotiating Body for Scotland, the regulation making powers, and these amendments to those powers, fall within the reserved scope of employment rights and duties and industrial relations (Head H1 of Schedule 5 of the Scotland Act 1998). Chapter 2 of Part 3 of the Bill gives the Scottish Ministers regulation making powers in relation to the Social Care Negotiating Body for Scotland. Among other things these powers relate to the Body's creation, the ratification of agreements reached by the Body as to pay, and terms and conditions of employment of relevant social care workers, and what is to happen if the Body cannot reach agreement. The amendments tabled on 7 July 2025 make changes to these regulation making powers, thereby further altering the executive competence of the Scottish Ministers. The Scottish and UK Governments agree that the effect of the six amendments is to alter the executive competence of the Scottish Ministers and therefore require the Scottish Parliament's consent.

Amendment to Clause 44

9. Clause 40 gives the Scottish Ministers regulation making powers to make provision in relation to the remit of the Negotiating Body for Scotland, including a requirement to submit to the Scottish Ministers agreements regarding relevant social care workers, their terms and conditions or any other matter relating to their employment. Clause 43 provides the Scottish Ministers with the power to ratify such agreements in regulations. Clause 44 sets out the effect of agreements ratified under clause 43. The amendment to clause 44 inserts a new subsection (5) to ensure that the effect of an agreement of a Social Care Negotiating Body cannot be to alter a person's terms and conditions of employment to make the person worse off and does not prevent an employer from offering more favourable terms and conditions than those provided for by the agreement.

Amendments to Clause 45

10. The first amendment to clause 45 is consequential to the second amendment to clause 45. The first amendment inserts a reference to the new clause 45(8) (as inserted by the second amendment to clause 45) into clause 45(4), thereby ensuring that clause 45(4) will also take account of the application of clause 45(8).

11. The second amendment to clause 45 introduces a new subsection (8) into clause 45, mirroring the provisions of the amendment to clause 44. Clause 45 outlines the procedures that apply when the Social Care Negotiating Body for

Scotland informs the Scottish Ministers that it has been unable to reach an agreement. In such cases, the Scottish Ministers may make regulations specifying the terms and conditions for affected social care workers. This amendment ensures that these regulations cannot adversely affect an individual's existing employment terms and conditions, and they do not prevent employers from offering terms that are more favourable than those set out in the regulations.

Amendments to Clause 46

12. Clause 46 enables the Scottish Ministers to make regulations about the issuing of guidance and codes of practice in relation to agreements (submitted in terms of regulations made under clauses 40 or 41), and regulations permitting the Scottish Ministers to deal with any matter which had originally been referred to the Social Care Negotiating Body in the event that the Body cannot reach agreement about that matter (clause 45). The first amendment to clause 46 inserts a new subsection (3A) into clause 46 to provide that the regulations must include an obligation on the Scottish Ministers to lay the guidance or code before the Scottish Parliament and to be subject to the procedure specified in the regulations.

13. The second amendment to clause 46 specifies that the appropriate legislature in which the guidance and codes of practice referred to in paragraph 12 above are to be laid in Scotland is the Scottish Parliament.

Amendment to Clause 49

14. The amendment to clause 49 is consequential to the second amendment to clause 45. The amendment omits subsections (2) to (4) of clause 49 and the reference to subsection (2) in clause 49(1). These subsections are no longer required due to the effect of the second amendment to clause 45.

Reasons for recommending legislative consent

15. The Scottish Government has a clear and long-standing commitment to fair work and continues to provide funding to support the real living wage for social care workers providing direct care through commissioned services. The current mechanism is based on contractual arrangements which is limited by the devolution settlement – employment matters are reserved. To that end, the wider Bill presents a significant opportunity to utilise the clear and unequivocal power conferred on Scottish Ministers to address this aspect of fair work through a Social Care Negotiating Body for Scotland.

16. These amendments make further provision to ensure fair treatment for social care workers in Scotland by providing that any agreement made by the Social Care Negotiating Body for Scotland, or regulations made by the Scottish Ministers where an agreement is not reached, cannot adversely affect a person's terms and conditions of employment.

17. This aligns with the Scottish Government's approach to supporting pay and conditions within the social care sector, and would ensure alignment with wider UK levels of pay and conditions and employment policies.

Consultation

18. There has been no specific Scottish Government consultation on those areas requiring legislative consent. However, the Scottish Government has continually engaged with Scottish Government Legal Directorate, UK Government and Welsh Government Officials throughout the development of the Bill.

Financial implications

19. There are no financial implications arising directly from these provisions. There may be financial implications arising from the exercise of these powers. These will have to be considered as such proposals are developed. The UK Government has not produced an impact assessment in relation to these measures.

Post EU scrutiny

20. These provisions are not relevant to the Scottish Government's policy to maintain alignment with the EU.

Conclusion

21. The Scottish Government is supportive of these amendments and recommends legislative consent to their provision.

Draft Legislative Consent Motion

22. The draft motion, which will be lodged by the Minister for Social Care and Mental Wellbeing, is:

"That the Parliament agrees that the amendments tabled on 7 July 2025 to clauses 44 to 46 and 49 of the Employment Rights Bill, which was introduced in the House of Commons on 10 October 2024, in relation to the establishment of the Social Care Negotiating Body for Scotland, so far as these amendments further alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament."

Scottish Government
August 2025

This Supplementary Legislative Consent Memorandum relates to the Employment Rights Bill (UK legislation) and was lodged with the Scottish Parliament on 14 August 2025

Employment Rights Bill – Supplementary Legislative Consent Memorandum

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