
The Welsh Government's Legislative Consent Memorandum on the Employment Rights Bill

Welsh Government response to the Legislation, Justice and Constitution Committee's report

April 2025

The Employment Rights Bill ("the Bill") was introduced in the House of Commons on 10 October 2024. Certain elements of the Bill require the legislative consent of the Senedd, and on 5 December 2024, I laid a Legislative Consent Memorandum for the Bill ('the LCM') before the Senedd. On 19 December I laid a supplementary LCM in respect of certain Government amendments to the Bill ('the SLCM').

On 31 January, the Legislation, Justice and Constitution Committee ('LJCC') wrote to me requesting further information on certain matters related to the Bill, to which I responded on 7 February. On 26 March the LJCC published a report ('the Report') on the LCM and the SLCM.

Responses to recommendations

This response addresses the single conclusion and two recommendations of the Report and uses the section numbering found in the Bill as amended at Public Committee in the House of Commons (which was used in the Report).

The Bill has not yet been debated by the Senedd.

LJCC Conclusion 1 - We agree with the Welsh Government's assessment that clauses 25, 26 and 61 of the Bill as introduced (clauses 27, 28 and 65 of the Bill as amended at Public Bill Committee) require the consent of the Senedd in accordance with Standing Order 29.

No response required.

LJCC Recommendation 1 - The Welsh Government should provide further information outlining why the consent of the Senedd is required for clauses 49, 52, 54 and 71 of the Bill as introduced (clauses 53, 56, 58 and 76 of the version as amended at Public Bill Committee).

Response: Accept

I am of the view that clauses 53, 56 and 58 have regard to devolved matters because they have an impact on Senedd legislation. These clauses make provision for Wales, England and Scotland identical to that made by parts of the Senedd's Trade Union (Wales) Act 2017. Therefore, these provisions render those parts of the Trade Union (Wales) Act 2017 redundant. Whilst the legal position will not be changed by these amendments, that position will no longer be the result of Senedd legislation – it will be the result of UK legislation.

Moreover, as the committee has identified, after the amendments come into force, the legal effect currently achieved by a Senedd Act will be achieved by an Act, the subject-matter of which is reserved by operation of paragraph 141 of Schedule 7A. Clause 76 amends the Trade Union (Wales) Act 2017 (by repealing section 1). It is the view of the Welsh Government that this direct amendment of a Senedd Act is inherently linked to the effect of clauses 53, 56 and 58 discussed above and so also requires an LCM.

LJCC Recommendation 2 – The Welsh Government should make representations to the UK Government to seek the Bill's amendment for the purposes of removing the Senedd Commission from the scope of clause 26 of the Bill as introduced (clause 28 in the version of the Bill as amended at Public Bill Committee).

Response: Reject

The UK Government is already able to make regulations on equalities matters which would apply to the Senedd Commission under section 153(1) of the Equality Act 2010.

Therefore, the creation of a new power for the Secretary of State to impose equalities-related duties on the Senedd Commission would be congruent with the existing legislative landscape. Moreover, excluding the Senedd Commission from the scope of that new power would create significant inconsistency for two reasons.

First, the Scottish Parliamentary Corporate Body and the Parliamentary Commissioner for Administration (the only other two entities listed as “Parliamentary and devolved bodies” in Schedule 19 to the Equality Act 2010) will be subject to regulations made under clause 28. It would be anomalous for the Senedd Commission to be excluded from the scope of that provision when other similar bodies are included, particularly when one of those bodies is the equivalent of the Senedd Commission for a different devolved administration.

Second, even if the Senedd Commission were carved out from the scope of clause 28, the Secretary of State would still be able to require it to do various things under section 153(1) of the Equality Act 2010 but not under the new section 78A of the same legislation. It would be incongruous if the Secretary of State could make regulations applicable to the Commission under section 153(1) but not under the new section 78A, given that both provisions deal with similar equalities-related issues.

Separately, were the Senedd Commission to be excluded from the scope of clause 28, the Welsh Ministers would not be able to impose equalities-related duties on the Senedd Commission via section 153(2) of the Equalities Act 2010. This is because the Senedd Commission is not listed in Part 2 of Schedule 19 to that Act. The result would be that the Senedd Commission would not be required to produce an equality action plan in relation to gender equality under any provision. This would essentially place it in a unique position as compared to other public bodies.
