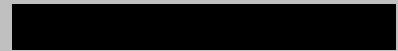




**Northern Ireland  
Assembly**

**Committee for Finance  
Room 346  
Parliament Buildings**



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**To: Emer Boyle, Clerk to the Communities Committee**

**From: Peter Hall, Clerk to the Finance committee**

**Date: 28<sup>th</sup> February 2025**

**Subject: Employment Rights Bill LCM**

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Dear Emer,

At its meeting of 26<sup>th</sup> February 2025, the Committee for Finance noted correspondence from the Department of Finance providing a briefing on the Employment Rights Bill, Legislative Consent Motion request, which will impact on the Procurement Act 2023.

Members are aware that DoF officials attended the Communities Committee meeting on the 27<sup>th</sup> February 2025 in support of a joint Legislative Consent Motion briefing, for which the Department for Communities has the lead.

The Committee agreed to write indicating that it is content to note the application of the LCM with respect to the DoF remit and asks that Members be kept abreast of the progress of the LCM. We have attached a copy of the Department of Finance briefing paper for the information of your committee.

You will wish to share this with your Committee.

Regards,

**Peter Hall  
Clerk to the Finance Committee**

**Enc 1**

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**Our reference:** SUB-0101-2025

**Date:** 21 February 2025

Matthew, a chara

## **EMPLOYMENT RIGHTS BILL- LEGISLATIVE CONSENT MOTION**

Please find attached briefing at Annex A on the Employment Rights Bill, Legislative Consent Motion which impacts on the Procurement Act 2023.

DoF officials will be attending the Communities Committee on the 27 February 2025 in support of a joint Legislative Consent Motion which the Department for Communities is leading.

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**JOHN O'DOWD MLA**  
**FINANCE MINISTER**

## **Annex A**

### *Employment Rights Bill*

1. The Employment Rights Bill was introduced in the House of Commons on 10 October 2024 and flows from the Labour Government's commitment to introduce legislation within 100 days of entering office.
2. It aims to improve workplace conditions, extend employee protections, modernise employment laws, enhance existing provisions and introduce new rights. Employment Law is devolved here, therefore most of the provisions in Employment Rights Bill apply to England, Scotland and Wales.
3. Cabinet Office officials contacted the Department of Finance's Construction and Procurement Delivery (CPD) on 17 October 2024 seeking direction on provisions for outsourced workers currently incorporated in the Employment Rights Bill.

### *Procurement Act 2023*

4. Cabinet Office officials highlighted that Section 25 of the Employment Rights Bill includes provisions to amend The Procurement Act 2023 to allow a UK Minister (Minister of the Crown) to produce and publish a code of practice to protect the conditions of workers who are transferred in outsourcing contracts (i.e. a Two-tier workforce code of practice).
5. Section 25 of the Employment Rights Bill, as originally drafted, did not apply to contracting authorities here (with the exception of local bodies carrying out reserved functions (e.g. NI Office, Ministry of Defence, HMRC etc)). This means that UK Ministers or the NI Executive are not required to produce, publish or apply the Code of Practice to relevant NI public bodies.
6. Cabinet Office requested a response from the Department of Finance on the preferred option for the drafting of Section 25 by 23 October 2024.

7. At that time Cabinet Office advised there was no intention to write to Ministers in relation to this matter as it is currently drafted as not applying to NI bodies. However, it offered the following options for the Department of Finance to consider:
- Section 25 remains as drafted and therefore will not apply to NI public contracts awarded by public bodies;
  - Section 25 is amended permitting UK Ministers to set a code that applies here. This will be the same code that is developed for contracting authorities in England. This could include a consent requirement (locally we would have to consent to any code and associated regulations); or
  - Section 25 is amended to allow the Executive to have equivalent powers to set its own code and apply that to outsourced contracts let by public bodies here.
8. Given the lack of an opportunity to consult on the options and to identify how these measures would align with the consultation on the update to Employment legislation here. The then Finance Minister Caoimhe Archibald gave approval for DoF officials to advise Cabinet Office that Section 25 of the Employment Rights Bill should remain as drafted and therefore it would not apply to NI public bodies.

#### *Legislative Consent Motion*

9. The provisions in the Bill relating to employment rights, which are transferred, cut across the Department for Communities (DfC), the Department of Agriculture, Environment and Rural Affairs (DAERA), the Department for the Economy (DfE) and the Department of Finance (DoF) as follows:
- for the Department for Communities there are measures relating to reforms to Statutory Sick Pay and the transfer of Statutory Sick Pay

enforcement and dispute resolution powers from HMRC, where they currently sit, to the proposed Fair Work Agency;

- for DAERA there are proposals to abolish the Gangmasters and Labour Abuse Authority, with the transfer of those functions to the Fair Work Agency and certain savings provisions;
- For the Department for the Economy there are measures in the Bill which would enable the Secretary of State to increase the remit of the Fair Work Agency in the future on a range of labour market and employment legislation which may by agreement include Northern Ireland devolved legislation. There are no immediate impacts for DfE upon creation of the Fair Work Agency; and
- For the Department of Finance there are proposals in respect of bodies carrying out reserved functions in Northern Ireland and in relation to the protection of workers in outsourced contracts run by those bodies.

10. On 17 December 2024, Justin Madders MP wrote to the Finance, Communities and the Economy Ministers requesting a Legislative Consent Motion for those parts of the Bill which fall within this jurisdiction's legislative competence.

11. Within the remit of public procurement and therefore DoF, the letter from Justin Madder MP stated;

‘With regards to clause 25 of the Bill as introduced, this amends the Procurement Act 2023, which extends to the whole of the United Kingdom. Although procurement by transferred Northern Ireland authorities (as defined in the Procurement Act 2023) is excluded from the application of clause 25, it will capture procurement carried out by bodies in Northern Ireland which do not meet that description. As the clause will impact procurement in relation to transferred matters in Northern Ireland, the UKG's view is that this clause is

within the legislative competence of the Northern Ireland Assembly and therefore engages the legislative consent process’

12. The Economy Minister responded to Justin Madders MP on 7 January 2025 expressing concerns over the consent mechanisms within the Bill in relation to the Fair Work Agency. As originally drafted, these provisions granted powers to the Secretary of State to make decisions involving devolved legislation without a requirement to gain consent from the devolved administration.
13. DfE officials have been working closely with colleagues in the Department of Business and Trade to agree amendments to the Bill to address these concerns.
14. In the interim, DfC officials agreed to take the lead in a joint Legislative Consent Motion (LCM) to incorporate the amendments to the Procurement Act for reserved bodies operating in this jurisdiction. The joint LCM will also include the DAERA and DfC provisions.
15. The Finance Minister wrote to Minister Lyons, in January 2025 advising she was aware Minister Murphy was awaiting a response from Justin Madders MP to confirm the amendments proposed by his officials which would allow the LCM to proceed and would respond to Justin Madders MP when those assurances had been received, however DoF officials would continue to work closely with DfC to progress the joint LCM whilst awaiting confirmation that the issues raised by the Economy Minister would be addressed.
16. On 17 February 2025, the Economy Minister met with Justin Madders MP and was given assurance that the consent mechanism that had been requested would be included in the Bill. She is content to proceed on that basis.
17. DfE has advised text is currently being drafted to that effect and will be put forward as an amendment at the appropriate stage of passage in Parliament.

18. As DfC is the lead department for the LCM, the Committee for Communities has an obligation to scrutinise the text and will work with DoF and the other departments.