



## LEGISLATIVE CONSENT MEMORANDUM

### THE EMPLOYMENT RIGHTS BILL

#### Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for Communities, is:

*“That this Assembly endorses, the principle of the extension to Northern Ireland of the provisions of the Employment Rights Bill relating to Statutory Sick Pay as contained in clauses 10 and 11 of the Bill, the Fair Work Agency under Part 5 of the Bill and the saving provisions as set out in Schedule 9 to the Bill as they relate to the Agricultural Wages (Regulations) (Northern Ireland) Order 1977, and in relation to public sector outsourcing of relevant contracts by bodies carrying out reserved functions in Northern Ireland, the protection of workers as set out in clause 27 of the Bill, and powers set out in Schedule 5 to the Bill enabling the Secretary of State for Business and Trade, with the consent of relevant Northern Ireland Departments, to increase the remit of the Fair Work Agency in the future on a range of labour market and employment legislation which may include Northern Ireland devolved legislation, which was introduced in the House of Commons on 10 October 2024.”*

#### Background

2. This memorandum has been laid before the Assembly by the Minister for Communities under Standing Order 42A(2). The Employment Rights Bill (the Bill) was introduced in the House of Commons on 10 October 2024. The latest version of the Bill can be found at:

<https://bills.parliament.uk/bills/3737>

#### Summary of the relevant parts of the Bill and its policy objectives

3. The Bill amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to strengthen Statutory Sick Pay (“SSP”). SSP is the minimum amount an employer is required to pay to their employee when they are sick, where the employee meets the qualifying conditions. Currently an



individual must earn at least the Lower Earnings Limit (currently £123 per week) to be eligible for SSP.

4. The Bill will remove the requirement to earn at least the Lower Earnings Limit in order to be eligible for SSP and will also remove the provision that means SSP is not payable for the first three qualifying days.
5. Together, these two amendments will ensure that employees will be able to claim SSP from the first day of any period of entitlement and will extend entitlement to SSP to employees who were previously ineligible as their earnings fell below the lower earnings limit – these employees will be entitled to receive either the weekly rate of SSP or a percentage of their weekly wages (whichever is lower). This means that all eligible employees, regardless of earnings, will be entitled to SSP and that no one would receive more in SSP than they would in wages.
6. The Bill proposes the establishment of a UK-wide Single Enforcement Body, the Fair Work Agency (FWA), to better enforce worker's rights. The Bill proposes to amend the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to transfer SSP enforcement and dispute resolution powers from HMRC to the proposed FWA.
7. Part 5 of the Bill deals with 'relevant labour market legislation', concerning the Gangmasters Licensing Act 2004 ('the 2004 Act').
8. The Gangmasters and Labour Abuse Authority ('the GLAA') is a Non-Departmental Public Body which is sponsored by the Home Office and operates UK-wide under the 2004 Act to tackle worker exploitation, tax evasion and health and safety negligence. Its functions vary between regions of the UK, and in Northern Ireland it enforces licensing of employment agencies, labour providers and gangmasters who provide workers in the agriculture, horticulture and shellfish gathering sectors, including any associated processing and packing businesses. The GLAA currently employs two Northern Ireland-based Enforcement Officers.
9. The Bill will bring together existing enforcement functions including enforcement of the licensing regime for businesses operating as "gangmasters" to the FWA.
10. The 2004 Act is amended for the purposes of abolishing the GLAA and transferring the functions to the Secretary of State in relation to the enforcement of labour market legislation.



11. Paragraph 27 of Schedule 5 to the Bill will allow for the Secretary of State to add enactments to the list of relevant labour market legislation under the remit of the FWA, or to vary a reference to an enactment in that list that may include Northern Ireland devolved legislation in the future. The amended text in the Bill safeguards the devolved status of employment law whilst still affording Northern Ireland the option of utilising the FWA to enforce employment rights in the future, should the relevant Northern Ireland department deem that appropriate.

### **Provisions which deal with a Devolution Matter**

12. The purpose of the LCM is to seek agreement to the inclusion within the Bill of a number of provisions.
13. Clauses 10 and 11 make amendment of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ('the 1992 Act') regarding the period of incapacity for work, limitations on entitlement, rate of payment, and the circumstances in which periods of entitlement to SSP do not arise.
14. Clause 10 amends Part 11 of the 1992 Act to make SSP payable to employees for the first three Qualifying Days in a period of entitlement.
15. Subsections (2) and (3)(a) of clause 10 amend sections 147 and 148 of the 1992 Act to remove the condition that a period of incapacity for work must arise in order for an employer to be liable to make a payment with respect to a day of incapacity. This is a technical change to simplify the legislation given the changes to when a period of incapacity for work arises.
16. Subsection (3)(b) amends section 148 of the 1992 Act to change the period of incapacity for work so that it commences from the first day of incapacity for work, rather than the fourth consecutive day.
17. Subsections (4) and (5) amend sections 149(1) and 150(1) of the 1992 Act to make minor amendments to reflect the amendments made by subsections (2) and (3)(a), namely that the period of entitlement will be the first (rather than second) condition and qualifying days are the second (rather than third) condition.



18. Subsection (6) amends section 151 of the 1992 Act to repeal the provision that SSP is not payable for the first three qualifying days in any period of entitlement ('waiting days').
19. Subsection (7) amends section 152(2) of the 1992 Act to repeal the provision relating to the requirement for employers to be notified of a sickness absence during the waiting day period.
20. Clause 11 amends Part 11 of the 1992 Act to remove the prohibition on a period of entitlement for SSP purposes arising where a person earns below the Lower Earnings Limit. This means that all eligible employees, regardless of earnings, will be entitled to SSP.
21. Subsection (2)(a) amends section 153 of the 1992 Act setting the weekly rate of SSP at £116.75 or a prescribed percentage of the employee's weekly earnings, whichever is lower.
22. Subsection (2)(b) amends section 153 of the 1992 Act to enable the Department for Communities (DfC) to prescribe, by order, what the percentage, or percentages, should be for the purposes of subsection 1(b). This is consistent with the existing power of the Department to amend, by Order, the flat rate of SSP (such an Order is subject to the confirmatory process before the Assembly).
23. Subsection (3) repeals, in paragraph 2 of Schedule 11 to the 1992 Act, the requirement for an employee's normal weekly earnings to be more than the lower earnings limit.
24. The proposed FWA will be governed by Part 5 of the Bill with the relevant legislation relating to SSP (the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Social Security Administration (Northern Ireland) Act 1992) to be listed in Schedule 5, Part 1.
25. Clause 118 deals with the abolition of existing enforcement authorities. Paragraph (a) of subsection (1) abolishes the Gangmasters and Labour Abuse Authority, which was created under the Gangmasters (Licensing) Act 2004, as amended by the Immigration Act 2016. As a consequence, paragraph (a) of subsection (2) of this clause repeals section 1 of the Gangmasters (Licensing) Act 2004.



26. Clause 119 makes consequential amendments and transitional provisions. Subsection (1) establishes that Schedule 8 contains the consequential amendments relating to Part 5.
27. Subsection (2) introduces Part 1 of Schedule 9, which provides for the making of a scheme in relation to the abolition of the Gangmasters and Labour Abuse Authority. This scheme would provide for the transfer of staff, property, rights and liabilities to the Secretary of State.
28. Subsection (3) sets out that Part 2 of Schedule 9 provides other transitional and savings provisions in relation to Part 5.
29. Clause 124 confers a power on the Secretary of State to, by regulations, make provision that is consequential on any provision made by the Bill. This includes the ability to amend provisions made by, or under, primary legislation (but only in relation to primary legislation passed or made before the end of the Parliamentary session in which this Bill is passed as an Act).
30. Clause 128 sets out the territorial extent of the Bill. Clause 27, chapter 3 of Part 3 and Parts 5 and 6 of the Bill extend to England, Wales, Scotland and Northern Ireland. Amendments or repeals made by the Bill have the same extent as the provision amended or repealed.
31. Schedule 8 contains the consequential amendments to the Gangmasters (Licensing) Act 2004 which are referred to in clause 119.
32. Schedule 8 does not amend Sections 46 or 47 of the National Minimum Wage Act 1998 ('the 1998 Act'), which describe the relationship between the 1998 Act and relevant agricultural wages legislation, which for the purposes of Northern Ireland, is the Agricultural Wages (Regulations) (Northern Ireland) Order 1977 ('the 1977 Order').
33. Schedule 9 sets out the transitional and saving provisions relating to Part 5 of the Bill. Part 2, Paragraph 18 provides that the consequential amendments made by Schedule 8, to the 1998 Act do not affect any provisions of the 1998 Act for the purpose of legislation relating to agricultural wages in England Scotland, Wales and Northern Ireland. This is a saving provision which ensures the 1977 Order which provides for the functions and powers of the Agricultural Wages Board for Northern Ireland remains in force.





34. Clause 27 of the Bill seeks to amend the Procurement Act 2023 by establishing provisions for a UK Government Minister to produce and publish a code of practice in relation to the protection of workers in relevant outsourced contracts. This will apply where:
- reserved bodies are operating in Northern Ireland;
  - there is a joint procurement between a transferred Northern Ireland body and a UK reserved body (where the UK body is in the lead role); or
  - a transferred Northern Ireland body uses a framework set up by a reserved body or uses a reserved Central Procurement Authority.

Clause 27 does not apply to transferred Northern Ireland public bodies save for the above.

35. No current provisions in the Bill affect Northern Ireland employment law that is devolved. However, paragraph 27 of Schedule 5 to the Bill will allow for the Secretary of State to add enactments to the list of relevant labour market legislation under the remit of the FWA, or to vary a reference to an enactment in that list that may include Northern Ireland devolved legislation in the future. The amended text in the Bill safeguards the devolved status of employment law whilst still affording Northern Ireland the option of utilising the FWA to enforce employment rights in the future, should the relevant Northern Ireland department deem that appropriate.

### **Reasons for making the Provisions**

36. The UK Government intends to make changes to the qualifying conditions for SSP in keeping with its ‘Plan to Make Work Pay’ which sets out a significant and ambitious agenda to ensure workplace rights are fit for a modern economy, establish a single Enforcement Body, the FWA, to better enforce worker’s rights, empower working people and raise living standards. It also delivers on a commitment made in its ‘Plan to Make Work Pay’ to introduce related legislation within the first 100-days in government.
37. The proposed changes to SSP will remove the current definition of a “period of incapacity for work”, which is currently a period of four consecutive days or more and instead provide that a “period of incapacity for work” is a period of one or more days. Removal of the existing requirement to serve three waiting days, whereby employees do not receive SSP for the first three qualifying days of any period of entitlement, will enable employees to claim SSP from the first day of any period of entitlement.



38. Removal of the lower earnings limit will extend entitlement to SSP to employees who were previously ineligible as their earnings fell below the lower earnings limit – these employees will be entitled to receive either the weekly rate of SSP or a percentage of their weekly wages (whichever is lower). This will mean that all employees will be eligible for SSP, regardless of their earnings, and that no one would receive more in SSP than they would in wages.
39. Transfer of SSP enforcement and dispute resolution powers from HMRC's statutory payments dispute team (which currently administers the enforcement and dispute resolution process for SSP in both GB and Northern Ireland) to the proposed FWA, will sit better within the FWA's remit. The Department for Work and Pensions (DWP) and DfC will retain overarching policy responsibility and maintain an advisory role to support the FWA.
40. The abolition of the GLAA and the incorporation of its functions within the FWA is being proposed because it is considered that bringing together the functions of labour market enforcement providers will bring about specific benefits. These include better co-ordinated enforcement action and benefits relating to recognition of a single brand, and stronger links with stakeholders. However, it is understood that the functions currently carried out in Northern Ireland by the GLAA on the ground will not be impacted by the changes.
41. Schedule 9 to the Bill contains saving provisions which ensures the 1977 Regulations remain operable. The Agricultural Wages Board for Northern Ireland (which relies on the 1977 Regulations) is a statutory body which meets three times a year, to determine the minimum gross wages payable to agricultural workers and to set some conditions for holiday and sick pay entitlement. This saving provision maintains the status quo.
42. Clause 27 proposes to amend the Procurement Act 2023 by allowing a UK Minister to produce and publish a code of practice in relation to the protection of workers in outsourcing arrangements by bodies carrying out reserved functions in Northern Ireland to ensure workers are treated no less favourably than workers of the contracting authority.
43. It is intended that the FWA will become a 'one stop shop' for workers to enquire about and enforce their employment rights. Its main initial function in Northern Ireland will be enforcement of the National Minimum Wage, which is currently a reserved matter and that of the GLAA, which is devolved, but operates on a UK-wide basis.



44. In the immediate/short term it is not intended that the FWA will enforce any employment rights in Northern Ireland that are devolved; however, the Bill contains a power at Schedule 5, part 2, paragraph 27 which will enable the Secretary of State to increase the remit of the FWA, potentially substantially, in the future on a wide range of labour market and employment legislation.
45. This power is not restricted to GB and had the potential, as originally drafted, to bring in Northern Ireland devolved legislation without consultation with, or the consent of, the relevant Northern Ireland Department. However, it has been agreed with Minister Madders, of the Department for Business and Trade, that the text in the Bill will be amended to state that the consent of the relevant Northern Ireland Department(s) must be gained in relation to any future changes that impact Northern Ireland devolved legislation.

### **Reasons for utilising the Bill rather than an Act of the NI Assembly**

46. While SSP is not a social security benefit, the arrangements for SSP (and for instance Statutory Maternity Pay) fall under the scope of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and within the remit of the DfC.
47. Although social security is a devolved matter, in general social security policy and legislation in Northern Ireland operates in line with corresponding provision in Great Britain, in line with section 87 of the Northern Ireland Act 1998. In effect there is a single system of benefits and pensions operating across the UK.
48. Inclusion of provisions in the Bill equivalent to those SSP provisions proposed by the DWP will ensure that employees across Northern Ireland benefit from the same improved SSP conditions and enforcement and dispute resolution of worker's rights as employees elsewhere in the UK at the same time. This would avoid inequalities between employees across the UK.
49. If there is no agreement to including Northern Ireland provisions in the Bill, then it would be necessary to bring forward a separate Assembly Bill in order to maintain parity of provision across the UK. This would leave employees in Northern Ireland in a less advantageous position compared to employees elsewhere in the UK in the meantime. This could also burden employers who operate in both jurisdictions with additional administration.
50. Regarding the GLAA, the Bill abolishes this non-departmental public body which operates on a UK-wide basis, and in doing so amends UK primary





legislation. For this reason, it is appropriate to agree to extending provisions of the Bill to Northern Ireland.

51. The alternative to providing legislative consent to the relevant provision of the Bill extending to Northern Ireland would be to establish a Northern Ireland agency to undertake the work that the GLAA currently carries out. In abolishing the GLAA, the policy intention is to set up the UK-wide FWA and it is considered to be inappropriate to have a separate body dealing solely with Northern Ireland because of economies of scale, or limits on the availability of expertise to fill the membership of such an agency. Setting up a Northern Ireland agency for this purpose would require significant time and resource and any delay between the abolition of the GLAA in the rest of the UK and the establishment of a Northern Ireland agency would leave a gap in the enforcement of gangmaster licensing legislation.
52. Regarding the Agricultural Wages Board, saving provisions are included in Schedule 9 to the Bill, to ensure the continued operation of the 1977 Order and maintain the status quo. Not consenting to these provisions would mean that separate subordinate legislation would need to be taken forward to ensure the 1977 Order remains operable.
53. Public procurement is a transferred matter, however Northern Ireland operates under UK procurement legislation. The Procurement Act will come into effect on the 24th February 2025 and clause 27 of the Bill is being used to amend the Procurement Act for bodies carrying out reserved functions in Northern Ireland to require those transferred bodies to apply the same legislation as applies in England and Wales.
54. The creation of the FWA is a UK Government initiative and it is not intended that it will enforce devolved employment rights in the immediate/short term. It does however envisage that it will expand in the future and it is feasible that its remit may extend to enforcing rights which Northern Ireland Ministers may also wish to be enforced. There could be benefits and economies of scale for Northern Ireland in enforcing certain rights on a UK wide basis, even within the devolved sphere. It is considered that the revised text of the Bill safeguards the devolved status of employment law, whilst keeping open the possibility of Northern Ireland using the FWA in the future, should Ministers here wish to do so. For these reasons it is therefore appropriate for such powers to be contained within a Westminster Bill.
55. The Bill received Second Reading on 21 October and will enter Report Stage in the House of Commons in early March 2025. It is expected that the Bill



will complete its progression through Parliament by June 2025. It would therefore be expedient to agree to the inclusion of the Northern Ireland provisions in the Bill. A Legislative Consent Motion must be agreed before the Bill completes the final amending stage in the House of Lords which is expected to be in early May 2025.

## **Consultation**

56. DWP consulted (alongside the Department for Business and Trade (DBT)) on a number of issues, including the proposed changes to SSP. The consultation sought views as to the percentage of wages that should be paid to employees who earn less than £116.75 per week. Once this has been agreed it will be introduced by way of an amendment to the Bill.
57. The consultation offered Northern Ireland employers and their representative bodies the opportunity to respond to the consultation and to engage directly with DWP / DBT on the impacts of the proposals. The consultation was launched on 21 October 2024 and closed on 4 December 2024.
58. The former Department for Business, Energy and Industrial Strategy (BEIS), now DBT, conducted a UK-wide consultation in 2019 on establishing a new single enforcement body for employment rights. The majority of respondents were in favour, citing better co-ordinated enforcement action and pooling of intelligence, benefits relating to recognition of a single brand and stronger links with stakeholders.
59. The proposed amendments to the Procurement Act 2023 in respect of public sector outsourcing and the protection of workers, do not apply to Northern Ireland public bodies, therefore no consultation has been carried out by the Department of Finance (DoF).
60. The FWA will not enforce devolved Northern Ireland employment rights in the immediate/short term. Should it be planned for the FWA's remit to be extended to include devolved employment legislation consideration will be given by the Department for the Economy (DfE) to the appropriate consultation mechanisms at that time.

## **Human Rights and Equality**

61. The provisions of the Bill are considered compatible with the Human Rights Act 1998.



62. Equality screening of the SSP provisions is currently underway. It is not expected that the Northern Ireland provisions of the Bill will have a significant impact on equality of opportunity.
63. The proposed amendments to the Procurement Act 2023 in respect of public sector outsourcing and the protection of workers, do not apply to Northern Ireland public bodies, therefore equality screening has not been carried out by DoF.
64. The FWA will not extend its enforcement of devolved Northern Ireland employment rights in the immediate/short term. Should it be planned for the FWA's remit to be extended to include devolved employment legislation consideration will be given by DfE to the appropriate human rights and equality screening requirements at that time.

### **Financial Implications**

65. The proposals in respect of SSP are not anticipated to have impacts for the Northern Ireland block grant.
66. The proposed amendments to the Procurement Act 2023 in respect of public sector outsourcing and the protection of workers, do not apply to Northern Ireland public bodies and there are no financial implications.
67. The proposal to extend the powers of the Secretary of State to amend the list of relevant labour market legislation has no current financial implications. The FWA will not extend its enforcement of devolved Northern Ireland employment rights in the immediate/short term. Should it be planned for the FWA's remit to be extended to include devolved employment legislation, consideration will be given by DfE to the financial implications at that time.

### **Summary of Regulatory Impact**

68. A Regulatory Impact Assessment has been carried out to consider the impact of the proposed changes to SSP on business, charities and the voluntary sector. This has been published on DfC's website.
69. A Regulatory Impact Assessment screening was carried out in respect of the abolition of the GLAA, which determined that there are no anticipated impacts on Northern Ireland businesses, charities or the voluntary sector.
70. The proposed amendments to the Procurement Act 2023 in respect of public sector outsourcing and the protection of workers, do not apply to Northern



Ireland public bodies and a Regulatory Impact Assessment was deemed not to be required.

71. The FWA will not extend its enforcement of devolved Northern Ireland employment rights in the immediate/short term. Should it be planned for the FWA's remit to be extended to include devolved employment legislation consideration will be given by DfE to the appropriate regulatory impact assessment requirements at that time.

### **Engagement to date with Statutory Committees**

72. The Committee for Communities has been informed of the intention to seek a Legislative Consent Motion and the Committee will be consulted as part of the Legislative Consent Motion process. DAERA officials have consulted with the Committee for Agriculture, Environment and Rural Affairs. As the provisions of Clause 27 are not applicable to the transferred public bodies within DoF's responsibilities the Finance Committee has not been consulted to date. The Finance Committee will be consulted in due course as the Legislative Consent Motion progresses. The Committee for the Economy will be made aware of the Legislative Consent Motion process. The FWA will not extend its enforcement of devolved Northern Ireland employment rights in the immediate/short term but should it be planned for its remit to be extended to include devolved employment legislation in the future the Committee will be consulted as appropriate.

### **Conclusion**

73. The view of the Minister for Communities is that, in the interests of good government, the provisions of the Bill dealing with devolution matters should be included in the Bill.

**Department for Communities**

**Date: 21 February 2025**