



**Unite the union submission to the Communities committee
on the
Legislative Consent Memorandum**

Unite the union welcomes the opportunity to make this submission to the NI Assembly Department for Communities' committee on the legislative consent memorandum on the 'Employment Rights Bill'.

We would highlight that this submission has been prepared quickly by this union within the last two weeks as we were only made aware of the DfC committee discussion on the legislative consent motion on 21st February 2025.

Unite has over one million members throughout the UK. We organise workers across all sectors of the economy including agriculture and food production, manufacturing, financial services, transport, construction, energy and utilities, information technology, service industries, health, local government and the not-for-profit sector.

In Northern Ireland, Unite organises workers across all sectors and in almost every major workplace.

Legislative Consent Memorandum

The draft motion from the Department for Communities endorses the extension to Northern Ireland of the provisions of the Employment Rights bill relating to (a) statutory sick pay (clauses 10 and 11), (b) the saving provisions relating to the Agricultural Wages Order (1977), (c) relating to the public sector outsourcing of relevant contracts conducting reserved functions in Northern Ireland, (d) the protection of workers (clause 27) and (e) to increase the remit of the Fair Work Agency including the responsibilities of the Gangmaster & Labour Abuse Authority.

Unite the union is generally supportive of the proposed measures – most of which aim at the improvement of legal protections for workers and for the establishment of a single enforcement body for workers' rights and legal entitlements. While many of the provisions relate to reserved matters, employment rights and protections are devolved to the Northern Ireland Assembly and in general we would seek legislation and enforcement reflecting that devolved status.

The proposed legislative consent motion is to give force to provisions contained within the Employment Rights bill of England and Wales. In Northern Ireland proposals for modernising employment rights are being brought forward under the 'Good Jobs' bill which has just

finished consultation. There is an obvious concern that a legislative consent motion might prejudice the latter bill or at least tend to constrain commitments made in Northern Ireland to those already in force in England and Wales. This is a particular concern given the additional protections around workers' rights in Northern Ireland needed to ensure the region's continued harmonisation with the EU's market for goods.

In general, therefore Unite supports the NI Assembly passing its own legislation in regard to workers' rights and that enforcement is taken forward in a way that will recognise the region's differing legislative framework and economic structure.

The memorandum issued by DfC on the proposed legislative consent motion states that 'no current provisions in the Bill affect Northern Ireland law that is devolved'. It also states that the FWA which will be established 'will not enforce devolved Northern Ireland employment rights in the immediate/short term'. However, it also considers the possibility that 'should...the FWA's remit... be extended to include devolved employment legislation consideration will be given by DfE to the appropriate consultation mechanisms at the time'. We would be concerned that this is an inadequate approach.

We would suggest that given NI employment law is different to that in force in England and Wales there is a strong basis for enforcement structures at Northern Ireland level – or at least oversight mechanisms be established at a regional level. Any motion to facilitate establishment of the FWA with a remit in Northern Ireland should therefore include explicit provisions to afford regional public accountability.

We note with concern that the paragraph 27 of Schedule 5 to the bill allows 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. We therefore welcome the commitment from the DfC in its memorandum that 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 NI department deem that appropriate'.

Provisions to improve Statutory Sick Pay

The legislative consent motion will extend to Northern Ireland the provision of the employment rights bill relating to Statutory Sick pay. These are welcome provisions and will offer significant protection to workers seeking to avail of this benefit. We support measures to remove the eligibility requirement for earnings to be above the lower earnings limit and allow payment from the first day of any period of entitlement.

Ineligibility for SSP is twice as common for women as men. Three unpaid days of absence causes financial difficulties, especially for low-paid workers, who often have to budget on a week-to-week basis. These are progressive changes which are wholly supported by Unite.

There remains lack of clarity over the rate of statutory sick pay that will be paid to low income workers. Workers who earn less than SSP (per week) should receive their normal pay but if the government is intent on pursuing a percentage rate, that it should mirror the 95 per cent

rate currently received by those at the Lower Earnings Limit. Removal of the Lower Earnings Rate was intended to deliver improvements to workers' rights. There is no justification for low earners to lose out. Any percentage arrangement should only apply to those who earn below SSP. There is a risk that up to 1.3 million low-paid workers could receive less than under current arrangements, which would be incompatible with the government's pledge to strengthen sick pay. The government should move swiftly to review the current rate of SSP so that workers don't fall into financial hardship when they are absent from work due to illness.

The bill will also transfer statutory sick pay enforcement and dispute resolution powers from HMRC to the proposed FWA. Again, we see no obvious concern in relation to this so long as the latter body is adequately resourced for this task.

Provisions to abolish GLAA

The bill will also abolish the Gangmasters and Labour Abuse Authority (GLAA) and subsume its functions into the new Fair Work Agency (FWA). The GLAA has a lead role in countering modern day slavery and other forms of worker exploitation and already operates on a UK-wide basis. Recent reports of the GLAA have highlighted the prevalence of such exploitative practices in the agricultural sector and their disproportionate presence in Northern Ireland. In Northern Ireland the body licenses employment agencies, labour providers and gangmasters who provide workers in agriculture, horticulture and shellfish gathering sectors. As such, any changes to the current operation of the GLAA need to be fully considered.

The GLAA was established to tackle the growing problem of worker exploitation. When it was first set up it included a tripartite partnership approach including trade unions but over time this has been transformed and trade unions largely excluded. The central role of trade unions in identifying abuse and the economic exploitation of workers needs to be reflected in any new structure.

There is a strong case for public accountability structures for the new enforcement structures to be established at Northern Ireland level based on a tripartite (trade union, employer and independent department-appointed members) structure similar to that in force in the Agricultural Wages Board. This is important to ensure that the FWA is effective at a regional level and to ensure it takes a proactive as opposed to a reactive approach to enforcement.

It is also important that the new FWA adopts an ethos and culture focussed on the vindication of workers' rights as opposed to one tied to enforcement of migration controls. Workers subject to abuse or modern-day slavery are often trapped in their situation due to their legal residency status or have significant debts to the gangs who have brought them here. The approach of enforcement should reflect that reality.

Furthermore, it is important that companies who derive financial or economic benefit from the presence of modern day slavery in their supply chains are held accountable.

It is important that Northern Ireland takes the opportunity to advance a more humanitarian and progressive approach in tackling modern day slavery and wider exploitation of workers. As such, it is important that additional amendments are sought to the bill which will provide

for local accountability and oversight structures and for a regionalised approach to enforcement and culture.

Provisions in relation to the Agricultural Wages Board

Schedule 9, part 2, paragraph 18 of the bill sets out transitional and saving provisions to ensure the 1977 Order which provides for the functions and powers of the Agricultural Wages Board for Northern Ireland remains in place.

This is a welcome and necessary provision. The AWB's role in Northern Ireland will be of even greater importance with the centralisation of other enforcement functions to the FWA.

Wider considerations

Clause 27 of the bill amends the procurement Act 2023 to provide for a UK government minister to produce and publish a code of practice in relation to the protection of workers in outsourced contracts. This will only apply in Northern Ireland where the contracts are from reserved bodies operating in Northern Ireland, where there is joint procurement between a transferred NI body and a reserved UK body – with the UK body in lead role, and where a transferred NI body uses a framework set up by a reserved body or uses a reserved central procurement authority.

While there are no obvious concerns raised by this; however, it is important to avoid any potential for the latter provisions to limit the applicability of procurement protections introduced by the NI Executive to procurement in Northern Ireland.

We would therefore ask that in the latter two cases an amendment is secured to the bill to ensure the standards and protections applicable to any outsourcing contract would satisfy the stronger provision of any code of practice introduced at UK level or by the Northern Ireland Assembly.

Unite recommendations in relation to the GLAA.

1. FWA public accountability and oversight at a Northern Ireland level

Unite would seek provision is made for a public accountability and oversight committee to be established at Northern Ireland level to guide the work locally of the proposed Fair Work Agency. This should have a tripartite structure like that in place for the Agricultural Wages Board in Northern Ireland – with at least one third representation from trade unions.

2. A workers' rights ethos and culture

This body should be charged with oversight of the enforcement activities of the FWA in Northern Ireland, ensuring a workers' rights approach and culture is maintained, and that the FWA adopts a proactive approach to enforcement of rights as opposed to a reactive one.

3. Good working relations with recognised trade unions

It is also vital that the FWA adopts proceeds based on good working relations with the trade unions. Where exploitation is uncovered in a company, or in the supply chain of a company,

with union recognition then the union involved should be kept informed and that there should be a presumption for the sharing of intelligence at all stages.

4. Resourcing

Currently the GLAA employs two Northern Ireland-based enforcement officers. There must be a provision made to ensure that the funding and human resources dedicated to the pursuit of modern-day slavery and other abusive forms of worker exploitation in Northern Ireland is maintained. The funding and human resources currently dedicated to GLAA for this purpose should be 'ring-fenced' in any future arrangement and made subject to decisions and oversight of Northern Ireland public accountability structures.

5. Compensation

The new FWA must be given the powers necessary to recover compensation and unpaid wages for workers where abuse or modern-day slavery is exposed. This is not always the case.

6. Firewall between exploitation enforcement and migration control

There needs to be a firewall between the FWA acting to tackle modern day slavery and workers exploitation and migration control. It is vital that workers subject to exploitation or modern day slavery are not treated as criminals and/or repatriated and instead that they are supported and treated with respect.