



**Committee for Communities**

# **Report on Legislative Consent Memorandum on The Employment Rights Bill**

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# **Powers and Membership**

## **Powers**

1. The Committee for Communities is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Communities and has a role in the initiation of legislation.
2. The Committee has power to:
  - consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
  - approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
  - call for persons and papers;
  - initiate enquiries and make reports; and
  - consider and advise on matters brought to the Committee by the Minister of Communities.

## **Membership**

3. The Committee has nine Members, including a Chairperson and Deputy Chairperson, and a quorum of five Members. The membership of the Committee is as follows:
  - Mr Colm Gildernew (Chairperson) MLA
  - Ms Nicola Brogan (Deputy Chairperson) MLA
  - Ms Kellie Armstrong MLA
  - Mr Andy Allen MBE MLA
  - Mr Maurice Bradley MLA

- Mr Maolíosa McHugh MLA
- Ms Sian Mulholland MLA
- Mr Brian Kingston MLA
- Mr Daniel McCrossan MLA

## Background

4. The Employment Rights Bill (the Bill) was introduced in the House of Commons on 10 October 2024.
5. 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.
6. 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.
7. 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.
8. 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.
9. Part 5 of the Bill deals with 'relevant labour market legislation', concerning the Gangmasters Licensing Act 2004 ('the 2004 Act').
10. 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.

11. The Bill will bring together existing enforcement functions including enforcement of the licensing regime for businesses operating as “gangmasters” to the FWA.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. 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').
20. 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.
21. 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.
22. 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.
23. 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).
24. 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.

25. 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.
26. 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.
27. Clause 119 makes consequential amendments and transitional provisions.
28. Subsection (1) establishes that Schedule 8 contains the consequential amendments relating to Part 5.
29. 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.
30. Subsection (3) sets out that Part 2 of Schedule 9 provides other transitional and savings provisions in relation to Part 5.
31. 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).
32. 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.
33. Schedule 8 contains the consequential amendments to the Gangmasters (Licensing) Act 2004 which are referred to in clause 119.



34. 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').
35. Schedule 9 sets out the transitional and saving provisions relating to 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.
36. 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.

37. 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.

## **Evidence submitted to the Committee**

38. Due to the very short time available to the Committee for consideration of the relevant provisions of the Bill in line with Standing Order 43A (7), the Committee wrote to the major trades unions in Northern Ireland as well as the Equality Commission and the Law Centre NI, seeking views.
39. The evidence submitted to the Committee is included at Appendix 1.
40. In its submission, the Equality Commission stated that, transferring responsibilities from the GLAA, it will be important to ensure that the remit of the FWA in NI covers all sectors of the economy where migrant labour is prevalent; that operations in Northern Ireland are sufficiently staffed / resourced; and that there is also an associated focus on raising awareness of the rights of migrant workers, all in the context of addressing the potential for forced labour and the exploitation of migrant workers.
41. The Commission also felt that it was relevant to highlight that Government Departments, including Whitehall Departments, must consider the Government's obligations under Windsor Framework Article 2 when promoting any primary, or making any secondary legislation that applies in Northern Ireland, for example, legislation that applies UK-wide. This has been confirmed in recent Cabinet Office Guidance (2025).
42. The Equality Commission noted that there is no reference in the documentation accompanying the Bill as to what consideration the Department for Business and Trade has given to compliance with WF Article 2. Whilst the Commission has not to date raised any concerns in terms of the Bill's compliance with WF Article 2, it is not clear from the documentation accompanying the Bill the degree to which the Department has considered the Bill's compliance with WF Article 2. The Commission has recommended that UK Government, and NI departments, ensure that Explanatory Memoranda/notes and Human Rights Memoranda/impact assessments on Bills and draft statutory instruments that may engage Article 2 set out their detailed consideration of compliance.

43. Finally, the Commission is aware that the Employment Rights Bill includes a range of measures which will serve to further enhance equality rights, protections and related measures / powers in Great Britain. The Commission therefore take the opportunity to again call for prompt action by the NI Executive and Assembly to take prompt steps to update and improve Northern Ireland's equality framework and related matters (e.g. transposition of the Pay Transparency Directive) to reflect commitments made, best international standards, and taking account of any lessons from Great Britain, Ireland and other relevant jurisdictions.
44. In its response, the Irish Congress for Trade Unions (ICTU) stated that that this particular change in the Employment Rights Bill has a larger than usual impact on the devolution settlement, as it proposes the creation of a UK-wide enforcement agency which will have an impact on NI agencies such as HSE NI. This is also connected to a Bill in the UK Parliament which mostly will not apply here. Many of its provisions are in the Department for Economy consultation on the 'Good Jobs' employment bill, and ICTU is hopeful this will shortly be subject to devolved legislation in the Northern Ireland Assembly.
45. ICTU asked that the Committee notifies the department that this seems to be more than a typical regulatory change that Assembly committees deal with regularly and that this stems from Westminster legislation which clearly limits itself and respects the devolution settlement.
46. In its submission, the Northern Ireland Committee of ICTU (NIC-ICTU) stated that it is broadly content with this Legislative Consent Motion and supports its passage.
47. NIC-ICTU welcomes the Bill's removal of 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. However, in its response to the DWP consultation on amendments to Statutory Sick Pay, NIC-ICTU did set out that it was its position that:
- Workers who earn less than SSP (per week) should receive their normal pay

- 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.
48. In NIC-ICTU's view, the removal of the Lower Earnings Rate was intended to deliver improvements to workers' rights and therefore there is no justification for low earners to lose out.
49. In principle, NIC-ICTU is supportive of the establishment of a Single Enforcement Body, the Fair Work Agency (FWA), to better enforce workers' rights and that it would wish to see a provision 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. In NICICTU's view, 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.
50. NIC-ICTU believes that the FWA must be adequately resourced to carry out its vital functions and allow it to adopt a proactive approach to enforcement of rights as opposed to a reactive one.
51. NIC-ICTU also believes that a firewall should be established between the FWA acting to tackle modern day slavery and workers exploitation and migration control. NIC-ICTU feel that 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.
52. NIC-ICTU also welcomes Schedule 9 to the Bill which contains saving provisions which ensures the Agricultural Wages Board for Northern Ireland remain operable.
53. In its comments on the LCM, Unite the Union stated that it 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.

54. While many of the provisions relate to reserved matters, employment rights and protections are devolved to the Northern Ireland Assembly and in general Unite would seek legislation and enforcement reflecting that devolved status.
55. Unite has a concern that a legislative consent motion might prejudice the Good Jobs bill being brought forward in the Assembly 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.
56. In general, Unite supports the 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.
57. Unite state that the memorandum issued by the Department for Communities 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'.
58. Unite raise concerns that this is an inadequate approach and suggest that, given Northern Ireland 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. Unite feels that any motion to facilitate establishment of the FWA with a remit in Northern Ireland should therefore include explicit provisions to afford regional public accountability.
59. Unite also raise concerns that 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. Unite therefore welcomes 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'.

60. On the legislative consent motion extending to Northern Ireland the provision of the employment rights bill relating to Statutory Sick pay, Unite states that it welcomes these provisions and will offer significant protection to workers seeking to avail of this benefit. Unite also 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.
61. In Unite's view, there remains a 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 and, in Unite's opinion, 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 and Unite feels that 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.
62. Unite notes that the bill will transfer statutory sick pay enforcement and dispute resolution powers from HMRC to the proposed FWA and states that it sees no obvious concern in relation to this so long as the latter body is adequately resourced for this task.
63. On the provisions to abolish Gangmasters and Labour Abuse Authority and subsume its functions into the new Fair Work Agency, Unite states that any changes to the current operation of the GLAA need to be fully considered and that the central role of trade unions in identifying abuse and the economic exploitation of workers needs to be reflected in any new structure.

64. Unite also feels that 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. The union feels that 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.
65. In Unite's view, 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. Unite feels that the approach of enforcement should reflect that reality.
66. Unite feels that 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.
67. On 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 and Unite states that this is a welcome and necessary provision. Unite feels that the AWB's role in Northern Ireland will be of even greater importance with the centralisation of other enforcement functions to the FWA.
68. 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. Unite feels that 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. Unite 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.



69. In relation to the GLAA, 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. Unite states that 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.
70. Unite states that the FWA should adopt a proactive approach to enforcement of rights as opposed to a reactive one and that it is also vital that the FWA adopts proceeds based on good working relations with the trade unions. Unite further states that if 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.
71. On the issues of resourcing, Unite states that the GLAA currently employs two Northern Ireland-based enforcement officers. Unite feels that 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. In Unite's view, the funding and human resources currently dedicated to GLAA for this purpose should be 'ringfenced' in any future arrangement and made subject to decisions and oversight of Northern Ireland public accountability structures.
72. Furthermore, Unite feels that 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, which is not always the case.
73. Finally, Unite states that 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.
74. Several Assembly Committees also submitted comments to the Committee for Communities. The Committee for Finance stated that it was content to note the

application of the LCM with respect to the Department of Finance remit and asked that Members be kept abreast of the progress of the LCM.

75. The Committee for the Economy indicated its general support for the relevant aspects of the Westminster Employment Rights Bill in respect of the Fair Work Agency, subject to sight of the anticipated amendment.
76. The Committee for Agriculture, Environment and Rural Affairs stated that, at its meeting on 20 February, Members heard that the functions of the GLAA will continue until the Fair Work Agency (FWA) in the Employment Rights Bill is operational and therefore there will be no gap in the service provided to workers and employers.
77. The Committee also heard that there has been heavy scrutiny of the Bill to date and no concerns have been raised by DAERA. It is considered that it will bring many benefits in protecting workers rights and that it will create a single recognisable brand for workers to identify with. The Committee for Agriculture, Environment and Rural Affairs therefore agreed to write to DAERA and to the Committee for Communities in support of the LCM.

## **Consideration of the Legislative Consent Memorandum by the Committee**

78. The Committee was briefed by Departmental officials from the Department for Communities, Department of Finance, Department for Economy and the Department for Agriculture, Environment and Rural Affairs at its meeting on 27 February 2025.
79. Members were informed that The Employment Rights Bill currently before Parliament includes provision relating to devolved matters. It was introduced at Westminster on 10 October 2024.
80. The Departmental officials stated that, where Parliament intends to legislate on a transferred matter, it is normal practice for the relevant GB Minister to seek the agreement of the devolved administration. In line with Standing Order 42A approval for a Legislative Consent Motion is therefore required.
81. The Committee was informed that the Bill aims to improve workers' conditions, extend employee protections, modernise employment laws and enhance existing provisions. It also allows for the establishment of a single UK-wide enforcement body, which is to be known as the Fair Work Agency (FWA), that will bring together existing enforcement functions across a range of areas. The Bill is substantial. However, the LCM includes only a small number of the provisions that appear in the Bill. Those provisions fall under the remit of the Department for Communities, the Department of Agriculture, Environment and Rural Affairs, the Department for the Economy and the Department of Finance.
82. The Bill is part of the Labour Party's commitment to introduce legislation within 100 days, and thus there was limited detailed information on the Bill until close to the time of its introduction. Given the wide-ranging nature of the Bill, significant work was required to obtain clarity on the aspects of the Bill that might require an LCM. The Department wrote to the Committee on 20 October to notify members of the proposed changes to statutory sick pay (SSP) and to outline that an LCM would be required in order to maintain parity. At that point, that was the only issue that engaged the LCM. However, other Departments

identified cross-cutting issues, and those required further significant work to clarify them.

83. Minister Muir, Minister of Agriculture, Environment and Rural Affairs, wrote to Minister Lyons in November saying that he was minded to agree to the provisions of the Bill regarding the abolition of the Gangmasters and Labour Abuse Authority (GLAA) being extended to Northern Ireland. Minister Lyons assented to that. Minister Murphy, who was then Minister for the Economy, wrote to the Executive on 14 November to inform them that his Department was planning to bring forward a separate Northern Ireland employment rights Bill. However, Minister Murphy subsequently wrote to Minister Lyons in January this year saying that he was now minded to agree to the provisions of the Bill relating to enforcement of labour market legislation being extended to Northern Ireland. Subsequently, the then Minister of Finance, Minister Archibald, wrote to Minister Lyons saying that she was minded to agree to the provisions of the Bill relating to procurement being extended to Northern Ireland and requested that that form part of the LCM. There was a series of communications that delayed the bringing forward of the LCM.
84. The Minister for Employment Rights, Competition and Markets has asked the Minister for Communities and relevant other Ministers to agree that the relevant provisions of the Bill should extend to here and to bring forward an LCM. The Department's starting point would be to avoid using the LCM procedures and the Department is conscious of Committee members' views on the use of LCMs. However, given the circumstances, Minister Lyons, in tandem with the previously mentioned Ministers, has taken the view that, on balance, it seems sensible to progress an LCM.
85. In relation to the Bill, the Departmental official stated that statutory sick pay is a transferred matter, and, while it is not a social security benefit, the arrangements for SSP fall under the scope of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and are within the remit of DFC. SSP is the minimum that an employer must pay an eligible employee if they are unable to work due to illness or injury. To be eligible, an employee must have average weekly earnings at or above the lower earnings limit of £6,396, £123 a week or £6,300 a year. SSP is paid from the fourth day of absence. The

standard rate of SSP is currently £116.75, and it can be paid for 28 weeks.

Many employers have their own occupational or contractual sick pay scheme, which can be more generous than SSP. Clause 10 will remove the waiting period for SSP. Employees must wait for three days before receiving SSP payments. By enabling SSP to start from the first day of sickness, the Bill ensures that employees are supported from the moment that they are unable to work, thus addressing gaps in financial support during short-term illness.

86. Clause 11 will remove the lower earnings limit so that all employees, regardless of their income, will be eligible for SSP. That will ensure that low-income workers, who are often most vulnerable to financial hardship, are not left without support when they need it most. To ensure fairness, SSP payments will be set at either the lower flat weekly rate of £116.75 or at a percentage of the employee's weekly wages. That means that the majority of people who get SSP will continue to get the flat rate. However, for those who already earn less than the flat rate, the percentage-based option ensures that no one receives more in SSP than they would earn through wages. The percentage figure will be confirmed in the Bill, and it will be amendable by regulations in the same way as is possible for the flat weekly rate of SSP.
87. Currently, HMRC carries out SSP enforcement and dispute resolution on a UK-wide basis. The Bill proposes to transfer SSP enforcement and dispute resolution to the new Fair Work Agency. In Northern Ireland, that change would ensure that local workers could benefit from the same level of enforcement and support as workers in Great Britain, with DFC retaining overarching SSP policy responsibility and maintaining an advisory role to support the new FWA. The proposed SSP reforms will ensure that employees are supported from the moment that they are unable to work, thus addressing gaps in financial support and reducing financial hardship for employees. They will also ensure that low-income workers, who are often the most vulnerable to financial hardship during illness, are not left without support when they need it most.
88. The Departmental official informed the Committee that there will be an increase in costs for some employers in Northern Ireland, particularly those who previously made SSP payments from the fourth day of sickness or excluded low-earning employees. While those costs represent a financial adjustment,

they are, arguably, mitigated to some degree by the broader benefits of supporting employee welfare, particularly those who are on lower incomes, and reducing workforce disruption and impacts on productivity caused by sick workers attending work and passing on illness to others.

89. The proposed measures that fall to DAERA are the abolition of the Gangmasters and Labour Abuse Authority, with its functions being transferred to the Fair Work Agency and certain saving provisions. The Gangmasters and Labour Abuse Authority is a non-departmental public body (NDPB) that is sponsored by the Home Office and operates UK-wide under the Gangmasters (Licensing) Act 2004. It tackles worker exploitation, tax evasion and health and safety negligence. In Northern Ireland, its operations are funded and managed through DAERA. The GLAA employs two Northern Ireland-based enforcement officers. Clause 118 amends the 2004 Act for the purposes of abolishing the GLAA and transferring its functions to the new Fair Work Agency. It is understood that the functions that the GLAA carries out in Northern Ireland will not change.
90. The Committee was told that Schedule 9 sets out the transitional and saving provision relating to Part 5 of the Bill. It provides that any of the amendments to the National Minimum Wage Act 1998 that are made in paragraphs 17 to 28 of schedule 8 do not affect any provisions of the Act relating to the operation of the Agricultural Wages (Regulation) (Northern Ireland) Order 1997. That is a saving provision that ensures that the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 remains operable. It also maintains the Agricultural Wages Board. The Agricultural Wages Board is a statutory body that meets three times a year to determine the minimum gross rates payable to agricultural workers and to set some conditions for holiday and sick pay entitlement.
91. The Committee was informed that the proposed measures that fall to the Department for the Economy relate to the protection of workers and these will enable the Secretary of State, with the consent of relevant Northern Ireland Departments, to increase the Fair Work Agency's remit on a range of labour market and employment legislation. Schedule 5 to the Bill lists the legislation that is subject to enforcement by the proposed Fair Work Agency under Part 5. Paragraph 27 of schedule 5 gives powers enabling the Secretary of State to

increase the remit of the FWA on a range of labour market and employment legislation by adding to the list of relevant labour market legislation in Part 1 of schedule 5. It has been agreed with the Department for Business and Trade (DBT) that the text will be amended to state that any such changes that include Northern Ireland devolved legislation will require the consent of the relevant Northern Ireland Department or Departments.

92. The Committee was further informed that the proposed measures that fall to the Department of Finance relate to an amendment of the Procurement Act 2023 in respect of bodies that carry out reserved functions in Northern Ireland on the protection of workers in outsourced contracts that those bodies run. Clause 27 would amend the Procurement Act 2023 by allowing a UK Minister to produce and publish a code of practice for the protection of workers in outsourcing arrangements by public bodies to ensure that workers are treated no less favourably than workers of the contracting authority. In Northern Ireland, it is proposed that that will apply where reserved bodies are operating in Northern Ireland, where there is a joint procurement between a transferred Northern Ireland body and a UK reserved body or when a transferred Northern Ireland body uses a framework set up by a reserved body or uses a reserved central procurement authority. Clause 27 will not apply to transferred Northern Ireland public bodies.
93. The Departmental official told the Committee that aligning with the Bill through an LCM would ensure that employees here receive the same enhanced SSP entitlements as their counterparts in Britain. That uniformity prevents inequalities in workers' protections and minimises administrative burdens for employers operating across the UK. DAERA is content that incorporating the proposed abolition of the GLAA and the establishment of the FWA avoids the need for a separate enforcement body in Northern Ireland, which would require significant time and resources to establish.
94. Members were informed that the Department for the Economy is content that the Bill will be amended to ensure that the powers enabling the Secretary of State to increase the remit of the FWA by adding to the list of relevant labour market legislation will rely on the consent of the relevant Northern Ireland Department where those powers relate to Northern Ireland legislation.

95. Members were also informed that the Department of Finance is content that the proposed measures on the protection of workers' outsourcing arrangements by reserved public bodies in Northern Ireland be in the LCM. The proposals are not expected to have any direct financial implications for the Northern Ireland block grant. A UK level consolidation of functions under the FWA is expected to generate efficiencies, although specific savings have not yet been quantified. Equality screening of the abolition of the GLAA and the reform of SSP has been carried out and concluded that no significant impacts on equality of opportunity were anticipated.
96. In conclusion, the Department officials informed Members that, should the FWA plan to extend its remit to include devolved employment legislation, the Department for the Economy will consider the appropriate human rights and equality screening requirements at that time. The proposed amendments to the Procurement Act 2023 on public-sector outsourcing and the protection of workers do not apply to Northern Ireland public bodies. Therefore, the Department of Finance has not carried out equality screening.
97. The Committee asked the officials about how the approval process will work in practice and what safeguards will be in place to ensure that the devolved employment laws that we have here are not altered without full Executive agreement.
98. Members were informed that there will be no immediate impact on devolved employment law with the creation of the Fair Work Agency. By seeking an amendment to the Bill, the Department for the Economy has future-proofed Northern Ireland's option to become involved with the Fair Work Agency's work should the relevant Minister deem that appropriate at that time. The Department for the Economy has been working closely with DBT colleagues and the Office of the Parliamentary Counsel on an amendment to the Bill that will be a consent mechanism. That mechanism will ensure that, if a future Secretary of State wants to increase the Fair Work Agency's remit so that it falls across devolved powers, the Secretary of State must seek the full consent of the relevant Northern Ireland Department, which is how it is written in the Bill, and they will not be able to proceed without it.



99. The Committee asked the officials, in relation to the proposal to abolish the Gangmasters and Labour Abuse Authority, whether they could provide any assurance that, as a result of that transition, there will be no weakening or dilution of the protection that the current level of labour market enforcement offers here, particularly in vulnerable sectors.
100. The officials stated that some of the benefits that will be brought about will enhance those protection levels. The only difference that employees, employers and employee providers will notice is that, instead of having to maybe go to multiple places when they need help, there will be a single place to go. The abolition of the GLAA and the consolidation of some of the enforcement functions represent efficiencies coming from intelligence resources as well. Daera can guarantee that there will be no dilution, as you suggest, of the protection measures that the GLAA offers.
101. The timescale for the establishment of the Fair Work Agency is approximately 18 to 24 months and the Bill guarantees that the GLAA's work will carry on under the Secretary of State until the Fair Work Agency can exercise its functions.
102. Officials were then asked if there will be any impact on the Health and Safety Executive (HSE) as a result of the LCM.
103. The Committee was informed that none is anticipated and that one of the main reasons why the Gangmasters and Labour Abuse Authority exists is to ensure that labour providers comply with all their statutory obligations, including, importantly, health and safety law and no impacts are anticipated there. The whole point of the FWA is to bring together disparate parts of employment law enforcement and regulation that are currently scattered across various arm's length bodies into one recognisable body with its own branding. It will largely be a one-stop shop for employees and employers who check the law.
104. In relation to Northern Ireland's employment rights being different due to the equality legislation and section 75, how that will be taken care of if Westminster is to lead the Fair Work Agency and if there would be a reduction in equality standards here.

105. The officials stated that there will be no impact on devolved employment law with the creation of the Fair Work Agency. Through the LCM, Northern Ireland is protecting a decision down the line whereby we may decide that we want to become involved. There is no indication from Whitehall about how it might want to extend the remit of the Fair Work Agency as it progresses, but it is known that the powers in the Bill as it stands allow for that to happen. The Department for the Economy has been having discussions with its counterparts in the Department for Business and Trade. By seeking an amendment and the consent mechanism, the devolved legislature here is being protected and no decisions to expand can happen without the full consent of the relevant Minister or Ministers.
106. When asked whether the FWA will be established in Northern Ireland, officials stated that It will be, because it is a UK-wide agency, but its remit here will be limited in the early days. The LCM focuses on the interaction between the FWA and the Northern Ireland devolved legislature, which is why the LCM is required.
107. In considering the LCM, the Committee decided that it is supportive of the provisions of bill relating to Statutory Sick pay and believes that these provisions will offer substantial protection to workers. The Committee also welcomes measures in the bill 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.
108. The Committee is also supportive of the Equality Commission and the Unions' calls to ensure that the remit of the FWA in Northern Ireland covers all sectors of the economy where migrant labour is prevalent; that operations in Northern Ireland are sufficiently staffed / resourced; and that there is an associated focus also on raising awareness of the rights of migrant workers, all in the context of addressing the potential for forced labour and the exploitation of migrant workers. The Committee is also supportive of the call for union representation on the FWA. The Committee feels that consideration should be given as to what local accountability mechanisms could be established to ensure there is appropriate oversight of the role that the FWA agency is proposed to fulfil. Consideration should also be given to the role that trade union representatives can play as part of that oversight.

109. The Committee is reassured to hear that there will be no impact on devolved employment law with the creation of the Fair Work Agency as Members feel that Northern Ireland's employment and equality legislation needs to be protected and the Committee feels that the Department for the Economy ensures that its proposed amendment on this issue is accepted. This will then ensure that the Northern Ireland Assembly is protected and that no decisions to expand the remit of the FWA can happen without the consent of Assembly Ministers.
110. Whilst the Committee is of the opinion that it would prefer to see legislation originating in the Assembly, they accept, in this case, that it is advantageous that any changes are made across all jurisdictions at the same time to ensure that people in Northern Ireland benefit from the changes being brought about by this Bill. The Committee expressed its discontent with the very tight timescale of 15 days to report on an LCM and asked that the Committee on Procedures examines the possibility of extending the deadline for statutory committees to report on an LCM.
111. The Committee is therefore supportive of the draft Legislative Consent Motion.

## **Links to Appendices**

### **Appendix 1: Written submissions**

[View written submissions received in relation to the report](#)

### **Appendix 2: Minutes of Evidence**

[View Minutes of Evidence from evidence sessions related to the report](#)

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