

ASSEMBLY RESTRICT

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwyyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partïon.

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Legal Advice Note

LEGISLATIVE CONSENT MEMORANDUM (5) – ENTERPRISE AND REGULATORY REFORM BILL –

Background

1. On the 11th January 2013, Alun Davies AM, Deputy Minister for Agriculture, Fisheries, Food and European Programmes gave notice of a motion in the following terms –

“To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Enterprise and Regulatory Reform Bill which relate to the abolition of the Agricultural Wages Board for England and Wales, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

2. The Legislative Consent Memorandum (“LCM”) was considered on the 15th January 2013 by the Business Committee, who agreed not to refer the LCM to a committee for consideration due to the short timescale and for the Legislative Consent Motion to be debated in plenary on Tuesday 29 January 2013. This Note is intended to inform that consideration.

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3. This is the fifth LCM in relation to the Enterprise and Regulatory Reform Bill (“the Bill”). A previous LCM was laid on the 12th June in relation to the water industry and another on the 10th July in relation to the Green Investment Bank. A third was laid on the 5th October 2012 in relation to provisions of the Bill which relate to a power for Welsh Ministers to include sunset and review clauses in subordinate legislation, insofar as they fall within the legislative competence of the National Assembly for Wales. A further LCM was also laid on 11th January 2013 in relation to provisions of the Bill which require suppliers of goods and services to provide electronic data to customers. The matters dealt with in those LCMs are not included in the analysis that follows.

The Bill

4. The Bill was introduced in the House of Commons on the 23rd May 2012 by the Secretary of State for Business, Innovation and Skills. The Bill was given a Second Reading on the 11th June 2012 and then proceeded to Committee Stage. It completed its progress through the House of Commons on the 17th October, and is now at Committee Stage in the House of Lords. The Bill consists of six Parts. The Current LCM inserts one new clause and one new schedule. They appear as amendments 28ZK, and 28ZU in the eighth marshalled list of amendments to be moved in the Grand Committee, and are annexed to this note for ease of reference at Annex ‘A’. They are government amendments in the name of Lord Younger of Leckie, Parliamentary Under-Secretary of State and Government Spokesperson for the Department for Business, Innovation and Skills in the House of Lords.
6. The main purpose of the Bill (according to the Explanatory Note) is to encourage long term growth and simplify regulation generally.”
7. As these clauses are the subject of amendments that have not yet been agreed, no explanation of their purpose is available within the Bill.
8. The amendments were considered in Grand Committee on 16th January 2013.

9. The proposer of the amendments, Lord Younger of Leckie, provided the following explanation on moving the amendments. It is included in full because of the need to ascertain the purpose of the amendments, as can be seen in paragraphs 14 onwards of this advice.

Viscount Younger of Leckie: The Agricultural Wages Board and Agricultural Wages Committees were set up in their current form nearly 65 years ago. The board was established at a time when there was little statutory employment protection for workers. Today the situation is very different and all workers are protected by the National Minimum Wage Act and working time regulations. Before I proceed any further, I want to reassure noble Lords that this Government firmly support the national minimum wage.

The Agricultural Wages Board is the only remaining sector wage council—all others have now been abolished. There is now no compelling reason why the agriculture sector alone should continue to be subject to a separate statutory employment regime. Let me explain why.

The agriculture industry today is very different. First, such businesses are often not just dependent on agriculture. Technological developments and increased mechanisation mean that there is no longer such dependency on manual labour in order to carry out agricultural functions. This has enabled businesses to expand and take on other, complementary work. The sectors within agriculture are therefore becoming increasingly diverse and many farm businesses now carry out non-agricultural activities alongside more traditional farming enterprises—for example bed and breakfast, and farm shops, where workers would not necessarily be covered by the agricultural wages order.

The agricultural wages order, which is made each year by the Agricultural Wages Board, takes no account of these changes within the agriculture industry. The process is one of "one size fits all" and this imposes a rigid and no longer appropriate structure on what are in

reality nowadays myriad businesses that come under the umbrella term of "the agriculture sector". The order is overly complicated and its provisions are wide-ranging and restrictive, hampering the ability of the industry to offer more flexible, modern employment packages. These amendments will end the separate statutory employment regime for agricultural workers in England and Wales and make amendments to the National Minimum Wage Act to bring the agricultural industry within the scope of the national minimum wage. The Government will also make amendments to secondary legislation to ensure that agricultural workers are adequately protected by the working time regulations.

The abolition of the Agricultural Wages Board and the associated agricultural minimum wage regime will enable farmers to offer terms and conditions for new workers that suit their particular circumstances and take account of the requirements of the specific farming sector. They will also be able to agree more flexible terms with existing workers by mutual consent. It will make it easier for farm businesses to employ workers, including taking on new workers, and encourage longer-term employment, thereby boosting growth and creating job opportunities.

The abolition of the Agricultural Wages Board will also mean that a single employment regime applies to all types of activities. This will bring transparency for both employers and workers, which is increasingly important given the diversity of farm businesses, not least in the interests of fairness and as the distinction between agricultural and non-agricultural activities becomes blurred. Even within the agricultural sector there can be confusion as to whether activities are covered by the agricultural wages order. For example, where a business packs and trims salad produce that is both grown on the farm and bought in, the packing of the home-grown produce is covered by the agricultural wages order, whereas the packing of the bought-in produce may not necessarily be. There are similar examples of confusion in the dairy and livestock sectors. Abolition will lift administrative and regulatory burdens from farm businesses and enable them to focus on their core business activity. It should

encourage farmers to offer more in the way of longer-term employment, including the payment of annual salaries. All of this will encourage the development of a sustainable and prosperous industry for the future.

For the avoidance of any doubt, let me offer some further reassurance. Agricultural workers who have contractual rights reflecting the terms of the agricultural wages order at the time of the abolition of the board will continue to have those rights until such time as the contract might be varied by agreement between the employer and the worker or until the contract comes to an end. Moving forward, it is important to bear in mind that if agriculture-based businesses want to retain and attract able and well-qualified people, they need to offer remuneration packages that are competitive. We know that the majority of workers in the agriculture sector already benefit from terms and conditions that are above the agricultural minimum wage rates. Currently, about 60% of permanent agricultural workers over the age of 22 are paid above the agriculture wages order minima. There is no reason why they should find themselves in a worse position in the absence of the board. The Government have asked the Low Pay Commission to include agricultural workers in its considerations when providing recommendations for all of the elements of the national minimum wage in order to achieve the smooth integration of agricultural workers in England and Wales.

Most of the functions of the 15 Agricultural Wages Committees in England have now lapsed in practice or been replaced by wider legislation. Their only remaining active function is to appoint members of the 16 Agricultural Dwelling House Advisory Committees in England, which are sometimes known as the ADHACs. The committees were established under the Rent (Agriculture) Act 1976 and their function is to give advice to local authorities on rehousing agricultural workers. As a result of changes in housing legislation, the number of requests for advice from ADHACs has declined significantly, to fewer than 10 in each of the last two years. There is no statutory requirement to consult an ADHAC and many local authorities happily take decisions on rehousing without such advice. I hope the

Committee agrees that these 31 regional committees in England are now effectively defunct bodies and their continued existence at public expense cannot be justified. With regard to the abolition of the ADHACs in England, I want to assure noble Lords that there are no plans to change the provisions in the Rent (Agriculture) Act 1976 which give security of tenure to protected tenants, and therefore the amendments will not in any way jeopardise the position of tenants with protected tenancies under the 1976 legislation.

In summary, these amendments will bring employment practices in the agricultural industry into the 21st century, enabling sustainable growth for the future. They will also remove a number of obsolete public bodies and contribute to the Government's wider programme of public body reform. I hope that, in the light of my remarks, noble Lords will accept them. I beg to move Amendment 28ZK.¹

10. A link to the record of debate is available at <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130116-gc0001.htm#13011657000101>

11. Decisions to alter a Bill in Grand Committee can only be made by unanimity. As there was opposition to the amendment in Committee on 16th January 2013, the matter will now be decided by the House at report stage.

Legislative Competence

12. The LCM identifies the Assembly's legislative competence under 'Agriculture, forestry, animals, plants and rural development' as being relevant.

13. The LCM does not provide any further information as to why the Welsh Government consider that the Bill makes provision within the Assembly's legislative competence.

¹ Hansard 16th January 2013

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14. As paragraph 2 of the LCM explains, the test specified in Standing Order 29.1 is whether the Bill makes provision '*for any purpose within the legislative competence of the Assembly or has a negative impact on that competence*'. It is not therefore necessary for the provision itself to be within that competence, provided the purpose of the provision is within that competence.
15. Section 108 of, and Schedule 7 to the Government of Wales Act 2006 ("GOWA") define the scope of the Assembly's legislative competence. Part 1 of Schedule 7 sets out the subjects in relation to which the Assembly may legislate, together with exceptions to the Assembly's legislative competence. Subject to limited exceptions, the Assembly cannot legislate about matters which are not covered by the subjects, either because they are not listed as subjects or because they are specifically listed as exceptions. Parts 2 and 3 of Schedule 7 also contain restrictions on the Assembly's competence and exceptions to those restrictions.
16. Section 108 (7) of GOWA sets out a 'purpose test' to decide, whether a proposal to legislate relates to a subject within the Assembly's legislative competence. It specifies that the question of whether a provision of an Act of the Assembly relates to one or more of the subjects in Part 1 of Schedule 7 or falls within an exception should be determined by reference to the purpose of the provision, having regard (amongst other things) to its effect in all the circumstances.
17. At least one of the purposes of the proposal, would appear to be, from the explanation (provided by Lord Younger of Leckie), to enable sustainable growth within the agriculture industry. This will be achieved by bringing agricultural workers within the National Minimum Wage legislation.
18. Achieving sustainable growth within the agricultural industry is clearly a matter that is within the legislative competence of the Assembly. Schedule 7 of GOWA does not provide a specific exception for employment law.

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19. It is the view of Legal Services that in accordance with the test specified in Standing Order 29, the amendment makes provision for a purpose within the legislative competence of the Assembly, i.e. achieving sustainable growth within the agriculture industry.
20. Members may also wish to be aware that whilst the amendment seeks to abolish both the Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees in England, these bodies will remain in Wales as they are devolved bodies. The power to reform or abolish these bodies rests with Welsh Ministers under section 28 of the Government of Wales Act 1998 (as amended) and Schedule 4 to that Act. This supports the view that the current proposal to abolish the AWB, as a connected body, relates to agriculture.

Conclusion

21. It is the view of Legal Services that the Bill will make provision in relation to Wales, for a purpose within the Assembly's legislative competence.
22. Whilst the amendment to the Bill has not been agreed, Standing Order 29.2 (iii) provides that a member of the government must lay a memorandum in relation to any Bill introduced by the UK Parliament, that by virtue of amendments tabled by a Minister of the Crown in either House, makes (or would make) relevant provision for the first time.
23. Standing Order 29.7 provides that the Assembly must consider a legislative consent motion which has been tabled.

Legal Services
January 2013

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After Clause 63

VISCOUNT YOUNGER OF LECKIE

Amendment 28ZK

Insert the following new Clause—

“Abolition of Agricultural Wages Board and related English bodies

- (1) The Agricultural Wages Board for England and Wales is abolished.
- (2) Every agricultural wages committee for an area in England is abolished.
- (3) Every agricultural dwelling–house advisory committee for an area in England is abolished.
- (4) Schedule (Abolition of Agricultural Wages Board and related English bodies: consequential provision) (abolition of Agricultural Wages Board and related English bodies: consequential provision) has effect.”

After Schedule 19

VISCOUNT YOUNGER OF LECKIE

Amendment 28ZU

Insert the following new Schedule—

“Abolition of Agricultural Wages Board and related English bodies:
consequential provision

1 In section 28 of the Rent (Agriculture) Act 1976 (duty of housing authority upon receiving application that agricultural worker be re–housed etc.), in subsection (3), for “The authority” substitute “If the dwelling–house is in Wales, the authority”.

2 The repeals and revocations in the following table have effect.

Reference Extent of repeal or revocation

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Agricultural Wages Act 1948 (c. 47) Section 1.

In section 2— (a) in subsection (1)— (a) the words “England and”, and (b) paragraph (a), and (b) subsection (4).

Sections 3 to 4.

Sections 6 to 16.

In section 17— (a) in subsection (1), the definition of “the national minimum wage”, and (b) subsection (1A).

Sections 17A to 19.

Schedules 1, 2 and 4.

The Agricultural Wages Committee Regulations 1949 (S.I. 1949/1885) Regulation 3(2)(a) and the word “and” after it.

Regulation 16.

Public Records Act 1958 (c. 51) In the table at the end of paragraph 3 of Schedule 1, the words “Agricultural Wages Board.”

Parliamentary Commissioner Act 1967 (c. 13) In Schedule 2, the words “Agricultural Wages Board for England and Wales.”

Agriculture Act 1967 (c. 22) Section 67.

Agriculture (Miscellaneous Provisions) Act 1968 (c. 34) Section 46.

Agricultural Wages Committees (Wages Structure) Regulations 1971 (S.I. 1971/844) The whole instrument.

Agricultural Wages Committees (Areas) Order 1974 (S.I. 1974/515) In article 3(1), the words— (a) “Subject to the provisions of this order”, and (b) “an agricultural wages committee for each county in England and”.

Article 3(2).

Article 4.

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The Schedule.

Social Security (Consequential Provisions) Act 1975 (c. 18) In Schedule 2, paragraph 32.

House of Commons Disqualification Act 1975 (c. 24) In Part 3 of Schedule 1, the words “Member appointed by a Minister of the Crown of the Agricultural Wages Board for England and Wales.”

Northern Ireland Assembly Disqualification Act 1975 (c. 25) In Part 3 of Schedule 1, the words “of the Agricultural Wages Board for England and Wales or”.

Social Security Pensions Act 1975 (c. 60) In Schedule 4, paragraph 10.

Employment Protection Act 1975 (c. 71) Section 97(1) and (2).

Schedule 9.

In Schedule 17, paragraph 12.

Agriculture (Miscellaneous Provisions) Act 1976 (c. 55) In section 4(1)(c), the words from “(including” to the end.

Agricultural Wages Committees (New Combinations of Counties) Order 1981 (S.I. 1981/179) The whole order.

Agricultural Wages Committee (Cleveland, Durham, Northumberland and Tyne and Wear) Order 1989 (S.I. 1989/1173) The whole order.

Social Security (Consequential Provisions) Act 1992 (c. 6) In Schedule 2, paragraph 4.

Agricultural Wages Committees (Areas) (England) Order 1995 (S.I. 1995/3186) The whole order.

Employment Rights Act 1996 (c. 18) In section 35— (a) in subsection (2), paragraph (a) and the word “or” at the end of that paragraph, and (b) in subsection (3), paragraph (b) and the “and” before that paragraph.

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National Minimum Wage Act 1998 (c. 39) In section 16(6)— (a) in the definition of “the agricultural wages legislation”, paragraph (a), and (b) in the definition of “relevant authority”, paragraphs (a), (b) and (c).

In section 16A(5)— (a) in the definition of “enforcement officer”, paragraph (b), and (b) in the definition of “the relevant legislation”, paragraph (b).

Section 46(4)(a).

In section 47— (a) subsection (1)(a), (b) subsection (2)(a) and (d), (c) subsection (4)(a), (d) in subsection (4)(b), the words “(similar provision for Scotland)”, and (e) subsection (6)(a).

In section 55(1), in the definition of “regulations”, the words “by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly or”.

Part 1 of Schedule 2.

National Minimum Wage Regulations 1998 (S.I. 1999/584) Regulation 38(5)(a).

Freedom of Information Act 2000 (c. 36) In Part 6 of Schedule 1, the words “An Agricultural Wages Board for England and Wales”.

Criminal Justice Act 2003 (c. 44) In Schedule 25, paragraph 28.

Employment Relations Act 2004 (c. 24) Section 47.

In Schedule 1, paragraph 1.

Public Contracts Regulations 2006 (S.I. 2006/5) In Schedule 1, in the entry relating to the Agricultural Wages Board and agricultural wages committees, the words “Board and”.

Employment Act 2008 (c. 24) Section 8(6).

Section 9(6).

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Public Contracts (Scotland) Regulations 2012 (S.S.I. 2012/88) In Schedule 1, in the entry relating to the Agricultural Wages Board and agricultural wages committees, the words “Board and”.