**Trinity Term**
**[2014] UKSC 43**

# JUDGMENT

# AGRICULTURAL SECTOR (WALES) BILL - Reference by the Attorney General for England and Wales

**before**

**Lord Neuberger, President**
**Lady Hale, Deputy President**
**Lord Kerr**
**Lord Reed**
**Lord Thomas**

## JUDGMENT GIVEN ON

## 9 July 2014

**Heard on 17 and 18 February 2014**

*Appellant*
Dominic Grieve QC
Jonathan Swift QC
Joanne Clement
(Instructed by Treasury Solicitors)

*Respondent*
Theodore Huckle QC
Elisabeth Laing QC
(Instructed by Welsh Government Legal Services Department)

*Respondent*
John F Larkin QC
Conleth Bradley SC
(Instructed by Office of the Attorney General for Northern Ireland)

**LORD REED AND LORD THOMAS (with whom Lord Neuberger, Lady Hale and Lord Kerr agree)**

*The issue*

1. Her Majesty's Attorney General for England and Wales has referred to this Court under section 112(1) of the Government of Wales Act 2006 ("GWA 2006") the question of whether, on the proper construction of section 108 and Schedule 7 to the GWA 2006, the Agricultural Sector (Wales) Bill 2013 ("the Bill") is within the legislative competence of the National Assembly of Wales ("the Assembly").

2. The Bill was passed on 17 July 2013 primarily to establish a scheme for the regulation of agricultural wages in Wales. As we shall explain in more detail, the Agricultural Wages Act 1948 had until 2013 provided a regime for regulating agricultural wages for England and Wales under the superintendence of the Agricultural Wages Board. The Board made its last Order in July 2012. In 2013 the United Kingdom Parliament enacted the Enterprise and Regulatory Reform Act. Section 72 of that Act abolished the Agricultural Wages Board for England and Wales. Schedule 20 repealed or amended many of the provisions of the Agricultural Wages Act 1948 and other statutory provisions and subordinate legislation relating to the agricultural wages regime.

3. The Welsh Assembly Government ("the Welsh Government") decided that it wished to retain a regime for the regulation of agricultural wages in Wales. The Assembly seeks through the Bill to implement this policy by establishing for Wales such a regime through an Agricultural Advisory Panel for Wales. The Assembly considers that it has the legislative competence to do so, relying on section 108 of, and Schedule 7 to, the GWA 2006, which give it competence to make legislation which relates to:

> "Agriculture. Horticulture. Forestry. Fisheries and fishing. Animal health and welfare. Plant health. Plant varieties and seeds. Rural development."

4. The submission of the Attorney General and the Counsel General is that the GWA 2006 has to be interpreted against the legislative background of the regulation of agricultural wages in the United Kingdom and the development of the devolution settlement for Wales. When so considered, the Attorney General submits that in reality the Bill does not relate to agriculture but to employment and industrial

relations, which have not been devolved. In the submission of the Counsel General, the Bill relates to agriculture; and that is sufficient to bring it within the legislative competence of the Assembly, as a matter of the proper interpretation of section 108 and Schedule 7. For the reasons explained below, the Bill falls in our judgment within the competence of the Assembly.

*The approach to the construction of the GWA 2006*

5. The sole issue before the court is the proper interpretation of the GWA 2006. It is common ground that the principles to be adopted are those set out by Lord Hope in *Local Government Byelaws (Wales) Bill 2012 – reference by the Attorney General for England and Wales* [2012] UKSC 53; [2013] 1 AC 792, paras 78-81, following on from the guidance given in *Martin v Most* [2010] UKSC 10; 2010 SC (UKSC) 40, paras 44-53 and *Imperial Tobacco v Lord Advocate* [2012] UKSC 61; 2013 SC (UKSC) 153 paras 7-15.

6. Those principles can be summarised as follows:

i) The question whether a provision is outside the competence of the Assembly must be determined according to the particular rules that section 108 of, and Schedule 7 to, the GWA 2006, have laid down: see the *Local Government Byelaws (Wales) Bill 2012* case at para 79.

ii) The description of the GWA 2006 as an Act of great constitutional significance cannot be taken, in itself, to be a guide to its interpretation. The statute must be interpreted in the same way as any other statute: *Local Government Byelaws (Wales) Bill 2012*, para 80.

iii) When enacting the GWA 2006 Parliament had to define, necessarily in fairly general and abstract terms, permitted or prohibited areas of legislative activity. The aim was to achieve a constitutional settlement. It is proper to have regard to that purpose if help is needed as to what the words mean: see the *Local Government Byelaws (Wales) Bill 2012* case at para 80.

*The legislative background: the regulation of agricultural wages*

7. It is convenient first to set out the legislative background relating to the regulation of agricultural and other wages in the United Kingdom and the operation of the Agricultural Wages Act 1948 ("the 1948 Act") in relation to Wales between 1964 and 1998.

*The early legislation*

8. An Agricultural Wages Board was first established under the Corn Production Act 1917. Provisions of that Act imposed on an Agricultural Wages Board the duty to set a minimum wage for agricultural workers and gave it other powers and duties. Prior to that Act the Board of Trade had been given power under the Trade Boards Act 1909 to regulate wages in certain specified trades in the clothes-making and related industries, and to establish a Wages Board to fix minimum wages in any branch of such trades where an exceptionally low wage was paid. The Corn Production Act 1917 incorporated some of the provisions of the Trade Boards Act 1909.

9. Between 1917 and 1948 there were several statutes which provided for amended schemes for agricultural wages. Trade boards were also established to regulate wages in other industries. It is not necessary to refer to the amendments to the agricultural wages schemes or to the schemes for other industries. It is sufficient to note that the Agriculture Act 1920 provided that separate powers should apply with respect to Wales but, unlike Scotland, no separate Board of Agriculture was established for Wales; the functions in Wales were carried out by the Minister for Agriculture and Fisheries. That Act also established a Central Agricultural Wages Committee for Wales which was to exercise the powers of the Agricultural Wages Board in Wales. Those provisions did not survive long, as the Agricultural Wages (Regulation) Act 1924 set up agricultural wages committees in each of the counties of England and Wales and an Agricultural Wages Board for England and Wales. The function of the county agricultural wages committees was to set minimum rates of pay which were then to be notified to the Board, which made an order to carry out the decisions of such committees.

10. In the immediate aftermath of the 1939-45 war the Wages Councils Act 1945 provided for the replacement of trade boards by wages councils across a large number of industrial sectors and the scheme for agricultural wages was further changed.

*The 1948 Act*

11. The 1948 Act consolidated the changes. The scheme as established under that Act was that the Agricultural Wages Board for England and Wales had a duty to set a minimum wage for workers employed in agriculture and also had the power to set other terms and conditions of employment. Agricultural wages committees for counties or combinations of counties in England and Wales had various functions but gradually the functions of these committees became minimal. Under section 16 the Minister was given power to make regulations for giving effect to or modifying

the Act so far as it related to holidays and holiday pay. The Act did not extend to Scotland or Northern Ireland. The Act was amended by various Acts including the Agriculture Act 1967, the Equal Pay Act 1970 and the Employment Protection Act 1975.

12. There was separate legislation for Scotland from 1937. It made provision for an Agricultural Wages Board for Scotland and a Scottish Department of Agriculture. The legislation for Scotland was consolidated in the Agricultural Wages (Scotland) Act 1949, with the Secretary of State for Scotland exercising ministerial powers under that Act.

13. By 1993 the scheme for regulating agricultural wages under the 1948 Act was the only scheme for the regulation of wages in industry which remained. In the 1960s and 1970s some wages councils were abolished, and the powers of the remaining wages councils were reduced by the Wages Act 1986. The Trade Union Reform and Employment Rights Act 1993 abolished all the remaining wages councils.

14. With effect from April 1999 the 1948 Act was amended by the National Minimum Wage Act 1998, and the functions and powers of the Agricultural Wages Board were revised.

*The exercise of powers under the 1948 Act as regards Wales from 1964 to 1998*

15. In October 1964 the Prime Minister created the post of Secretary of State for Wales and the Welsh Office. From that time forward various executive powers of the departmental Secretaries of State and ministries in Whitehall were transferred to the Secretary of State for Wales.

16. Under these arrangements the Transfer of Functions (Wales) (No. 1) Order 1978 (SI 1978/272) transferred to the Secretary of State for Wales with effect from 1 April 1978 many of the functions of the Minister of Agriculture, Fisheries and Food in respect of Wales, to be exercised either solely or concurrently with the Minister. The powers transferred included the enforcement of agricultural wages legislation in Wales, the establishing of agriculture wages committees in Wales, and other powers that were to be exercised jointly with the Minister for Agriculture Fisheries and Food.

17. The assumption of these functions by the Secretary of State for Wales was reflected in the fact that the consultation paper on *Agricultural Pay and Conditions: the Operation of the Agricultural Wages Board* was published in July 1993 jointly

by the Minister of Agriculture, Fisheries and Food and the Welsh Office. As a result of that consultation it was acknowledged that the Agricultural Wages Board had wide acceptance from both sides of the agricultural industry. A further review took place in December 1999, but the Agricultural Wages Board continued to set wages, terms and conditions under the 1948 Act.

18. Before considering the further changes to the 1948 Act and further transfers of functions, it is necessary to refer to the development of devolution to Wales.

*The first phase of devolution: executive devolution under the Government of Wales Act 1998*

19. The Government of Wales Act 1998 ("the GWA 1998") established the first phase of devolution to Wales in the form of what has been described as executive devolution. That Act established the Assembly as a single body corporate. It was given the function to make subordinate legislation in place of the Secretary of State and to elect an Assembly First Secretary who with Assembly Secretaries appointed by him were to exercise administrative functions.

20. Schedule 2 of the GWA 1998 set out 18 "fields" in which the function to make subordinate legislation was to be transferred to the Assembly either by Orders in Council or new statutory provisions. These were the broad subject areas within which specific powers under UK legislation were to be transferred. The Schedule described the fields in the following terms:

> "1. Agriculture, forestry, fisheries and food. 2. Ancient monuments and historic buildings. 3 Culture (including museums, galleries and libraries). 4. Economic development. 5. Education and training ..."

21. Section 22 of the GWA 1998 enabled such functions so far as exercisable by a Minister of the Crown in relation to Wales to be transferred wholly to the Assembly by Order in Council or to be exercisable by the Assembly concurrently with a Minister of the Crown, or to be retained by the Minister on the basis that they could only be exercised with the agreement of, or after consultation with, the Assembly.

22. Acting under section 22 and other provisions of the GWA 1998, Her Majesty in Council made the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672). It transferred most of the functions that the Secretary of State for Wales had accumulated in the period from 1964. Included among the functions

transferred were powers to appoint to the Agricultural Wages Board and to appoint inspectors. The function of setting wages remained with the Board.

23. As a result of amendments effected by the Employment Relations Act 2004, section 11A was inserted into the 1948 Act. This gave the Secretary of State for Agriculture power to appoint officers for the enforcement of the Act within England and the Assembly power to do the same within Wales.

*The second phase of Welsh devolution: the GWA 2006, the split of legislative and executive functions and the competence to legislate under Legislative Competence Orders*

24. In 2004 a Commission under Lord Richard of Ammanford recommended significant changes to the scheme of devolution for Wales. As a result the Secretary of State for Wales published in June 2005 a White Paper, *Better Governance for Wales* (Cm 6582). It proposed a second phase of devolution by separating the legislative and executive functions of the Assembly and creating powers under which the Assembly could be enabled by Orders in Council to make or modify primary legislation.

25. The White Paper also proposed provision for a possible move to a third phase of devolution:

> "3.22 … However, it may prove in the future that even these additional powers are still insufficient to address the Assembly's needs and the option of providing the Assembly with further enhanced law-making powers needs to be available.
>
> 3.23 This would mean transferring primary legislative powers over all devolved fields direct to the Assembly. The Government is clear that this would represent a fundamental change to the Welsh settlement and would have to be endorsed in a referendum. The Government has no current plans for such a referendum but, in order to avoid the necessity of a third Government of Wales Bill, it proposes to provide for the possibility in this legislation.
>
> …
>
> 3.26 Conferring primary legislative powers on the Assembly would mean that, like the Scottish Parliament, it would be able to make law

on all the matters within its devolved fields. This would not include those subjects which remain the responsibility of Whitehall Departments for Wales as well as for England. Like Scotland, these would include Fiscal and Monetary Policy, Immigration and Nationality and Social Security. Also excluded would be fields where the Scottish Executive, and the Secretary of State for Scotland before devolution, have functions but the Assembly does not, such as civil and criminal law, the administration of justice, police and the prison service."

26. The GWA 2006 gave effect to each of these proposals.

i) Parts 1 and 2 separated and redefined the functions of the Assembly and the Welsh Assembly Government.

ii) Part 3 provided for the second phase of devolution by giving the Assembly competence to make Assembly Measures which could amend primary UK legislation or take effect as primary legislation within the conditions set out in sections 94-95 and Schedule 5. Section 94 enabled the Assembly to make Assembly Measures which related to one or more of the "matters" specified in Schedule 5. Section 95 enabled Schedule 5 to be amended by Order in Council so as to add, vary or remove matters relating to the "fields" listed in Schedule 5, and so as to add, vary or remove such fields. As originally enacted, Schedule 5 contained the field "agriculture, fisheries, forestry and rural development", but no matters were specified within that field.

iii) Section 103 of Part 4 and Schedule 6 provided for a referendum to take place in the future on the question of whether the remaining provisions of Part 4 providing for the Assembly to have power to make Acts within the competence set out in sections 107-109 and Schedule 7 should come into force.

27. The separation of the functions of the Assembly and the Welsh Government came into effect on 4 May 2007 and the powers under Part 3 and Schedule 5 took effect then. Between then and May 2011, during the second phase of devolution, Schedule 5 was amended by Orders in Council, commonly known as Legislative Competence Orders, to provide more specific powers to make Assembly Measures within the fields set out in the Schedule. In particular, the National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009 (SI 2009/1758) inserted into the field of "agriculture, fisheries, forestry and rural development" Matter 1.1, described as follows:

"The red meat industry, in relation to –

(a) increasing efficiency or productivity in the industry;

(b) improving marketing in the industry;

(c) improving or developing services that the industry provides or could provide to the community;

(d) improving the ways in which the industry contributes to sustainable development."

The Assembly was thus given competence within the field of agriculture to make Assembly Measures in relation to a variety of aspects of the red meat industry. As is evident from Schedule 5 as amended by the Legislative Competence Orders, the terms on which the Assembly was given legislative competence were narrow and specific.

*The referendum in 2011*

28. In June 2010 a decision was made to hold a referendum under section 103. Following the referendum in March 2011, the remaining provisions of Part 4 of the GWA 2006 were brought into force on 6 May 2011, giving effect to the third phase of devolution.

*The third phase of devolution: the power of the Assembly to make Acts under Part 4 and Schedule 7*

29. The legislative scheme for the third phase of devolution under Part 4 of, and Schedule 7 to, the GWA 2006 did not follow the scheme of devolution for Scotland and Northern Ireland. Under those schemes, often referred to as reserved powers models, competence is given to the devolved legislatures in respect of all matters, unless the matter is excepted by way of reservation to the UK Parliament. The GWA 2006, despite the recommendation of the Richard Commission that the reserved powers model of Scotland and Northern Ireland be adopted, gave legislative competence only in respect of enumerated matters, in other words what is referred to as a conferred powers model.

*Legislative competence under section 108*

30. The legislative method adopted to confer powers on the Assembly is essentially that provided for under section 108. Subsection (1) enables an Act of the Assembly to make any provision that could be made by an Act of Parliament, subject to the qualification, under subsection (2), that an Act of the Assembly is not law so far as any provision of the Act is outside the Assembly's legislative competence. Under subsection (3), a provision is within the Assembly's legislative competence only if it falls within subsection (4) or (5). The material subsection in the present case is subsection (4), which provides:

> "(4) A provision of an Act of the Assembly falls within this subsection if—
>
> > (a) it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings), and
> >
> > (b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales."

Subsection (7) provides a definition of the term "relates to":

> "(7) For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances."

Subsection (6) imposes additional limits on the legislative competence of the Assembly, including incompatibility with EU law or the Convention rights (defined in section 158(1)), and breach of the restrictions set out in Part 2 of Schedule 7, having regard to the exceptions from those restrictions in Part 3 of that Schedule.

*Schedule 7*

31. Part 1 of Schedule 7 sets out 20 "headings" under which "subjects" falling within the legislative competence of the Assembly, and "exceptions" falling outside its competence, are listed. The first heading, as amended in December 2010 by SI 2010/2968, is "Agriculture, forestry, animals, plants and rural development". The paragraph under that heading provides:

> "Agriculture. Horticulture. Forestry. Fisheries and fishing. Animal health and welfare. Plant health. Plant varieties and seeds. Rural development.
>
> In this Part of this Schedule 'animal' means -
>
> (a) all mammals apart from humans, and
> (b) all animals other than mammals;
>
> and related expressions are to be construed accordingly.
>
> Exceptions -
>
> Hunting with dogs.
>
> Regulation of scientific or other experimental procedures on animals.
>
> Import and export control, and regulation of movement, of animals, plants and other things, apart from (but subject to provision made by or by virtue of any Act of Parliament relating to the control of imports or exports) -
>
> (a) the movement into and out of, and within, Wales of animals, animal products, plants, plant products and other things related to them for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and

(b) the movement into and out of, and within, Wales of animal feedstuff, fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal or plant health or the environment.

Authorisations of veterinary medicines and medicinal products."

32. As section 108(4) excludes from the competence of the Assembly all exceptions specified in Part 1 of Schedule 7, it is necessary to refer briefly to the heading "Economic development" as illustrative of the way in which the Schedule was drafted. The paragraph under this heading, as amended in December 2010 by SI 2010/2968, provides:

"Economic regeneration and development, including social development of communities, reclamation of derelict land and improvement of the environment. Promotion of business and competitiveness".

It then lists the exceptions, which include:

"Fiscal, economic and monetary policy and regulation of international trade.

…..

Intellectual property, apart from plant varieties.

….

Product standards, safety and liability, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).

Consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications, apart from in relation to food

(including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).

Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.

Occupational and personal pension schemes (including schemes which make provision for compensation for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity resulting from injury or disease), apart from schemes for or in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General or Deputy Welsh Ministers and schemes for or in respect of members of local authorities.”

33. In the context of the present case, it is relevant to note the exception of occupational pension schemes, including schemes which make provision for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity. This exception relates to specific aspects of employment, and in particular of the remuneration of employees. There is however no general exception in respect of employment or the remuneration of employees.

*Other matters relating to interpretation*

34. Before turning to the issue of interpretation of section 108 and Part 1 of Schedule 7, it is necessary to refer to three other matters which it was argued were relevant to interpretation.

*Ministerial statements in Parliament*

35. The Attorney General referred us to a statement made by the Parliamentary Under-Secretary of State for Wales on 23 January 2006 (Hansard (HC Debates), 23 January 2006, col 1248) in a debate on the Bill which became the GWA 2006. In that statement the Minister stated that the purpose of the Bill was not to “broaden devolution” but to “deepen” it. The same phrase was used by a Minister in the House of Lords in a debate on 6 June 2006 (Hansard (HL Debates) 6 June 2006 cols 1142-1143). We do not think that the use by the Minister of such a general and ambiguous phrase can properly be of any assistance in the interpretation of the GWA 2006.

*Correspondence prior to the introduction of the GWA 2006*

36. The Attorney General also sought to rely in aid of interpretation on correspondence between the Wales Office, the Welsh Government and Parliamentary Counsel in October and November 2005 prior to the introduction into Parliament of the Bill that became the GWA 2006.

37. The correspondence set out views of the Secretary of State for Wales and the then Ministers of the Welsh Government as to the scope of the subject "Agriculture" and whether it should include specific references to legislative competence in respect of the Agricultural Wages Board.

38. This correspondence was never referred to in Parliament. It represented the views of the Welsh Government and the Government in Westminster which were never made public or disclosed to Parliament.

39. In our view it would be wholly inconsistent with the transparent and open democratic process under which Parliament enacts legislation to take into account matters that have passed in private between two departments of the Executive or between the Executive of the UK and a devolved Executive. We therefore refused in the hearing of the reference to admit the correspondence. We refer to it no further.

*The distribution of powers prior to the third phase of devolution*

40. Both the Attorney General and the Counsel General contended that it was helpful to look at the way in which powers were distributed in the first and second phases of Welsh devolution. For example, the Attorney General contended that no power in respect of regulating agricultural wages had been transferred to the Assembly; the function remained with the Agricultural Wages Board; the power under section 16 of the 1948 Act to which we referred at para 11 was simply a power to make regulations, not a power to set agricultural wages.

41. However, although we consider that the Attorney General was correct in his contention as to the effect of section 16 of the 1948 Act, we cannot accept the Attorney General's further submission that the fact that a power was not transferred under the first or second phases of devolution to Wales should weigh heavily against the intention to transfer such a power in the third phase set out in Part 4 and Schedule 7 to the GWA 2006.

42. In our view each of the successive phases of Welsh devolution significantly increased the legislative competence of the Assembly. The distinction is most marked between the second and third phases of devolution, having regard to the way in which Parliament intended to confer legislative competence on the Assembly and the way in which the second phase of devolution in fact operated. The current legislative competence of the Assembly has to be determined by an interpretation of the terms of Part 4 and Schedule 7 and not by reference to the way in which functions may have been distributed between the UK Parliament and UK Ministers on the one hand and the Assembly on the other in the first and second phases of Welsh devolution.

43. There are therefore no additional matters or materials to be taken into account in the interpretation of section 108 and Schedule 7 in accordance with the principles we have set out at paras 5 and 6 above.

*The interpretation of section 108 and Schedule 7 – the issues*

44. As is apparent from the terms of section 108(4), it is necessary to examine whether the Bill relates to one or more of the subjects listed under the headings in Part 1 of Schedule 7, and then whether it falls within any of the exceptions specified in that Part of Schedule 7. It is also necessary to consider whether it is outside the Assembly's legislative competence by reason of any other provisions of the GWA 2006.

45. It is convenient to deal first with the exceptions and other limitations on legislative competence. No one contended that any of the exceptions specified in Schedule 7, or any limitation on competence set out in any of the other provisions of the GWA 2006, applied. This is a matter of real significance as we explain at paras 61-68 below.

46. The sole question therefore is whether the Bill relates to one of the subjects in Schedule 7. This question gives rise to four issues.

*What is the meaning of agriculture in Schedule 7?*

47. The first issue is the determination of the meaning of the relevant subject within Schedule 7, in this case "Agriculture" as set out in paragraph 1 of the Schedule. No definition of agriculture is set out in the GWA 2006.

48. It was submitted that assistance was to be derived from the dictionary definitions of agriculture. These included "the science or occupation of cultivating land or rearing livestock"; "the science or practice of cultivating the soil or rearing animals."

49. This is not however a case in which the court has to turn to a dictionary in order to find out the meaning of an unfamiliar word. The problem is to decide what Parliament meant by the subject of "Agriculture" in this specific context: in particular, in the context of the other subjects listed in the schedule. Each is intended to designate a subject-matter which is the object of legislative activity. In this context, it is clear to us that agriculture cannot be intended to refer solely to the cultivation of the soil or the rearing of livestock, but should be understood in a broader sense as designating the industry or economic activity of agriculture in all its aspects, including the business and other constituent elements of that industry, as it is to that broader subject matter that legislative activity is directed. The Legislative Competence Order to which we referred in para 27, covering such matters as marketing and the provision of services by the red meat industry, is an example of such activity, and would appear to have been based on a similarly broad understanding of the term "agriculture" where used in Schedule 5 of the GWA 2006.

*Does the purpose and effect of the Bill relate to agriculture?*

50. The second issue that has to be considered is whether the Bill "relates to" agriculture. As Lord Walker observed in *Martin v Most* [2010] UKSC 10; 2010 SC (UKSC) 40, para 49, the expression "relates to" indicates "more than a loose or consequential connection." The issue as to whether a provision relates to a subject is to be determined under section 108 (7) "by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances". As the section requires the purpose of the provision to be examined it is necessary to look not merely at what can be discerned from an objective consideration of the effect of its terms. The clearest indication of its purpose may be found in a report that gave rise to the legislation, or in the report of an Assembly committee; or its purpose may be clear from its context: *Imperial Tobacco v Lord Advocate* [2012] UKSC 61; 2013 SC (UKSC) 153, para 16.

51. In its Consultation Document, *The Future of the Agricultural Wages Board*, issued on 1 May 2013 after the decision of the UK Government to abolish the Agricultural Wages Board, the Welsh Government set out the circumstances relating to agriculture in Wales. 84% of the total land area of Wales was used for agricultural purposes. It was distinct from other sectors in Wales as it was mainly comprised of small employment units. There were 13,300 agricultural workers out of a total number of persons engaged in the agricultural sector of 58,400. There had been a decline in the number of agricultural workers. The Welsh Government set out its

objective of protecting the agricultural sector and supporting a sustainable and well-trained agricultural workforce in Wales. It sought views as to whether to establish a modernised Agricultural Wages Board for Wales. In the light of the responses to the consultation the Welsh Government decided to introduce the Bill.

52. It appears therefore from the consultation process that led to the Bill that its purpose was to regulate agricultural wages so that the agricultural industry in Wales would be supported and protected.

53. The legal and practical effects of the Bill are consistent with that purpose. An objective examination of its provisions shows that, among other effects, it will regulate agricultural wages and will have a direct effect on the agricultural industry in Wales. The Bill establishes an Agricultural Advisory Panel for Wales with the function of promoting careers in agriculture, preparing agricultural wages orders in draft and submitting them to Ministers for approval and advising Ministers on other matters relating to agriculture. Section 3 provides:

> "(1) An agricultural wages order is an order making provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.
>
> (2) An agricultural wages order may, in particular, include provision -
>
> > (a) specifying the minimum rates of remuneration to be paid to agricultural workers (including rates for periods when such workers are absent in consequence of sickness or injury);
> >
> > (b) about any benefits or advantages which, for the purposes of a minimum rate of remuneration, may be reckoned as remuneration in lieu of payment in cash;
> >
> > (c) requiring employers of agricultural workers to allow such workers to take such holidays and other leave as may be specified in the order.
>
> (3) An agricultural wages order may specify different rates and make different provision for different descriptions of agricultural workers.

(4) An agricultural wages order may not include any provision about the pensions of agricultural workers.

(5) No minimum rate of remuneration may be specified in an order under this section which is less than the national minimum wage."

The Bill provides by section 4 that Welsh Ministers can make agricultural wages orders. Enforcement powers are given by section 5 and by section 6 powers in respect of holiday entitlement.

54. Thus, although different in detail to the 1948 Act, its purpose and effect, as derived from a consideration of both the purpose of those introducing it and the objective effect of its terms, are to establish a statutory regime for the regulation of agricultural wages and other terms and conditions of employment within the agricultural industry in Wales. The purpose and effect of such a regime are to operate on the economic activity of agriculture by promoting and protecting the agricultural industry in Wales. Like the 1948 Act, the Bill is aptly classified as relating to agriculture.

*Does the Bill relate to subjects which are not devolved?*

55. Although the purpose and effect of the Bill in relation to agriculture are clear, it is necessary as the third issue to consider whether it also relates to other subjects.

56. The Attorney General submitted that the Bill will have an effect on employment and on industrial relations. Although he accepted that the effect would be on employment and industrial relations in the agricultural industry, the consequence of regulating wages and other terms and conditions in that industry would be to differentiate the industry in Wales from that in England (though not in Scotland and Northern Ireland) and also to differentiate it from other industries in Wales and in England. The Bill could also have the effect that employers in that industry could lose flexibility as regards terms and conditions and there could be a patchwork of different regulations in different sectors of the labour market. We accept that the Attorney General is broadly correct in his submission as to these effects.

57. The Attorney General next submitted that the usual approach to employment and industrial relations for most industries is to set minimum standards across the UK. The purpose of that approach is to create a level playing field so that wherever an employer is situated in the UK, and whatever the industry in which he is operating, that employer will be subject to the same employment law as regards pay,

terms and conditions. Thus no employer could obtain a competitive advantage by locating in a particular nation within the UK. We accept the general import of that submission.

58. "Employment" and "industrial relations" are commonly recognised subjects of legislative activity. They are, for example, matters specifically reserved under the heading "employment and industrial relations" in section H1 of Part 2 of Schedule 5 to the Scotland Act 1998, though it is be noted that the subject matter of the Agricultural Wages (Scotland) Act 1949 is excepted from the reservation. We therefore accept the contention of the Attorney General that the Bill might in principle be characterised as relating to "employment" and "industrial relations".

59. As the Attorney General pointed out, neither employment nor industrial relations is listed in Schedule 7 to the GWA 2006 as a subject in respect of which the Assembly has legislative competence. The fact that the Welsh Government has the power to fix the terms and conditions and wages of those employed by it or bodies it controls (such as the Welsh NHS) is not relevant. Such powers relate to those within the direct or indirect employment of the Welsh Government; they are not powers which regulate the employment of those employed by other employers. On the other hand, employment and industrial relations are not specified in Schedule 7, or elsewhere in the Act, as exceptions to the legislative competence of the Assembly. Certain aspects of employment are specified as exceptions, as we have explained in para 33, but the very fact that those particular aspects are specified tends to suggest that there was no intention to create a more general limitation on legislative competence.

*Does the Bill relate to agriculture if it also relates to other subjects which are neither listed as devolved nor specified as exceptions?*

60. The model of devolution to Wales in the third phase of devolution, as we have briefly explained at para 29, was to give the Assembly legislative competence only in relation to subjects expressly listed. Whether a provision relates to a listed subject is, as we have explained, to be determined under section 108 by considering the purpose and effect of the provision.

61. In the present case, for the reasons we have given, the Bill might in principle be regarded not only as relating to a subject listed as devolved, but also as relating to subjects which are not mentioned at all in the legislation. Employment and industrial relations are neither listed as devolved subjects, nor specified as exceptions.

62. It is therefore necessary to consider as the fourth issue the position where a Bill which relates to a listed subject might also be regarded as relating to other subjects of legislative activity which, although not specified as exceptions, are not listed as devolved. Is the consequence that such a Bill is not within the legislative competence of the Assembly?

63. It appears unlikely that this issue will frequently arise in relation to Welsh devolution. That is because Schedule 7, although briefer than the schedule of reserved matters in the Scotland Act 1998, contains a considerable number of exceptions which are applicable irrespective of the heading under which the exception is specified. The issue only arises in this reference because there is no exception of employment or industrial relations specified in the GWA 2006.

64. The Attorney General contended that the court should in a case such as this determine the "real" purpose and objective effect of the Bill. He submitted that in reality the purpose and objective effect of the Bill did not relate to agriculture but to employment and industrial relations. It should therefore be so characterised. This was the way that the UK Ministry, the Department of the Environment Food and Rural Affairs, had characterised the issue when consulting on the future of the Agricultural Wages Board in October 2012.

> "The Government is committed to providing an environment for all sectors of the economy in which private enterprise and businesses can flourish. To do so, the Government wishes to remove unnecessary red tape and administrative burden. A key coalition commitment is a cross-Government review of employment-related law which is taking forward a number of measures aimed at reducing burdens on business by simplifying employment legislation to give employers the flexibility to run their business effectively and have the confidence to take on staff and grow. The proposed abolition of the agricultural minimum wage and the Agricultural Wages Board is part of that overall wider review."

65. We cannot accept that this is the approach which the language of the GWA 2006 requires or permits. We acknowledge that, in principle, there may be more than one way in which the purpose and effect of a Bill may be capable of being characterised. The present is a case in point. A Bill which establishes a scheme for the regulation of agricultural wages can in principle reasonably be classified either as relating to agriculture or as relating to employment and industrial relations. Which classification is the more apt depends on the purpose for which the classification is being carried out, and on the classificatory scheme which has to be employed.

66. As we explained in para 6, the question whether a provision is outside the competence of the Assembly must be determined according to the particular rules that section 108 of, and Schedule 7 to, the GWA 2006, have laid down. The rules must be interpreted according to the ordinary meaning of the words used. In that way, a coherent, stable and workable outcome can be achieved.

67. As we have explained, the scheme of the conferred powers model adopted for Welsh devolution, as embodied in the GWA 2006, is to limit the legislative powers of the Assembly in relation to subjects listed in Schedule 7 by reference to the express exceptions and limitations contained in the Act, rather than via some dividing up of the subjects in Schedule 7 along lines not prescribed in the legislation. Under section 108(4) and (7), the Assembly has legislative competence if the Bill relates to one of the subjects listed in Part 1 of Schedule 7, provided it is not within one of the exceptions. In most cases, an exception will resolve the issue. Where however there is no exception, as in the present case, the legislative competence is to be determined in the manner set out in section 108. Provided that the Bill fairly and realistically satisfies the test set out in section 108(4) and (7) and is not within an exception, it does not matter whether in principle it might also be capable of being classified as relating to a subject which has not been devolved. The legislation does not require that a provision should only be capable of being characterised as relating to a devolved subject.

68. The Attorney General's submission would in effect compel us to re-write section 108 to make it operate in such a way as to add to the exceptions specified in Schedule 7. Instead of the specific exception which Parliament created in respect of occupational pension schemes, the court would create a much wider exception in respect of the remuneration of employees, or perhaps employment generally. Not only is that impermissible in principle, but it would in practice restrict the powers of the Assembly to legislate on subjects which were intended to be devolved to it: as the present case demonstrates, a Bill which undoubtedly relates to a devolved subject may also be capable of being classified as relating to a subject which is not devolved. Such an interpretation of section 108 would therefore give rise to an uncertain scheme that was neither stable nor workable. In contrast, the application of the clear test in section 108 provides for a scheme that is coherent, stable and workable.

*Conclusion*

69. As we have concluded for the reasons we have set out that the Bill relates to agriculture, it follows that it is within the legislative competence of the Assembly.