



9 July 2014

PRESS SUMMARY

Agricultural Sector (Wales) Bill - Reference by the Attorney General for England and Wales

[2014] UKSC 43

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Reed, Lord Thomas

BACKGROUND

This is a reference by the Attorney General for England and Wales under section 112(1) of the Government of Wales Act 2006 (“GWA 2006”). It concerns the question of whether the Agricultural Sector (Wales) Bill 2013 is within the legislative competence of the National Assembly for Wales **[1]**.

The Bill was passed on 17 July 2013 primarily to establish a scheme for the regulation of agricultural wages in Wales. Until 2013, the Agricultural Wages Act 1948 provided a regime for regulating agricultural wages for England and Wales under an Agricultural Advisory Panel for Wales, which was abolished by the UK Parliament under the Enterprise and Regulatory Reform Act 2013. **[2]**.

The Welsh Government wished to retain a regime for the regulation of agricultural wages in Wales. The Welsh Assembly seeks to implement such a regime through the creation of a new Agricultural Wages Panel. It considers that it has competence to do so, relying on section 108 of and Schedule 7 to the GWA 2006. Those provisions give the Assembly 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.” **[3]**

The Attorney General disagrees, submitting that, in reality, the Bill does not relate to agriculture but to employment and industrial relations, which have not been devolved to the Welsh Assembly **[4]**.

JUDGMENT

In a judgment delivered by Lord Reed and Lord Thomas, the court unanimously concludes that the Bill falls within the competence of the Welsh Assembly.

REASONS FOR THE JUDGMENT

Lord Reed and Lord Thomas explain the court’s decision by reference to the legislative background to the regulation of agricultural wages in the UK, and the operation of the 1948 Act in relation to Wales **[8-17]**. They also draw upon the development of devolution to Wales over three phases, beginning with the “executive devolution” secured under the Government of Wales Act 1998 **[19-23]** and culminating in the power of the Assembly to make Acts pursuant to Part 4 of, and Schedule 7 to, the GWA 2006 under a “conferred powers” model of devolution **[28-33]**.

The Justices reiterate the following principles to be adopted in interpreting the GWA 2006 **[5-6]**:

- the question whether a provision is outside the competence of the Assembly must be determined according to the rules in section 108 and Schedule 7;
- 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; and
- if help is needed to what the words mean, it is proper to have regard to the purpose that lay behind the GWA 2006, namely to achieve a constitutional settlement.

In interpreting section 108 and Part 1 of Schedule 7, the court explains that it cannot consider inter-governmental correspondence that preceded the GWA 2006 but was never made public or disclosed to Parliament [35-39]. The fact that a power was not conferred during the first or second phases of devolution does not assist, as each of the three phases significantly increased the legislative competence of the Assembly [40-43].

The sole question is therefore whether the Bill relates to “Agriculture” [46]. Significantly, 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 [45].

The first issue is the meaning of “Agriculture”. It is clear 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 [47-49].

The second issue is whether the Bill “relates to” agriculture. As the court has previously held, “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” [50].

It appears 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 [51-52]. The legal and practical effects of the Bill are consistent with that purpose [53]. Its purpose and effect 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 [54].

Employment and industrial relations are not specified as exceptions. Although certain aspects of employment and remuneration are specified as exceptions, that suggests that there was no intention to create a more general limitation on legislative competence [59; 68].

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 it might also be capable of being classified as relating to a subject which has not been devolved, such as employment and industrial relations. The legislation does not require that a provision should only be capable of being characterised as relating to a devolved subject [67]. The application of the clear test in section 108 provides for a scheme that is coherent, stable and workable [68].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>