

Consultation on the Future of the Agricultural Wages Board for England and Wales, and Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees in England

October 2012

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk

This document/publication is also available on our website at: www.defra.gov.uk/food-farm/farm-manage/wages/

Any enquiries regarding this document/publication should be sent to the following email address: awbconsultation@defra.gsi.gov.uk or by post to Dermot McInerney, Defra, Area 8E, 9 Millbank, c/o 17, Smith Square, LONDON SW1P 3JR

Contents

Chapter 1: Purpose, scope, and process of consultation.....	1
Purpose.....	1
Scope of the consultation	1
Impact Assessments	1
Deadline for comments	2
Confidentiality.....	2
Compliance with the Consultation Principles.....	2
Chapter 2: Background to the Agricultural Wages Board (AWB), Agricultural Wages Committees (AWCs) and Agricultural Dwelling House Advisory Committees (ADHACs)	3
Section 1 – Agricultural Wages Board.....	3
Section 2 – Agricultural Wages Committees	5
Section 3 Agricultural Dwelling House Advisory Committees.....	7
Chapter 3: Why is the Government proposing the abolition of the AWB in England and Wales, and AWCs and ADHACs in England?.....	9
Chapter 3: Why is the Government proposing the abolition of the AWB in England and Wales, and AWCs and ADHACs in England?.....	9
Section 1 - Agricultural Wages Board.....	9
Section 2 - Agricultural Wages Committees	13
Section 3 - Agricultural Dwelling House Advisory Committees.....	14
Chapter 4: The impact of abolition of the AWB, AWCs and ADHACs.....	16
Section 1 – Agricultural Wages Board.....	16
Section 2 – Agricultural Wages Committees	20
Section 3 – Agricultural Dwelling House Advisory Committees.....	21
Chapter 5 – If a decision is made to abolish the Agricultural Wages Board, Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees, how and when would the changes be implemented?	22
Chapter 6: Conclusion	23

Chapter 1: Purpose, scope, and process of consultation

Purpose

The purpose of this consultation is to seek views on the future of a number of public bodies: the Agricultural Wages Board for England and Wales (AWB), the 15 Agricultural Wages Committees (AWCs) in England and the 16 Agricultural Dwelling House Advisory Committees (ADHACs) in England.

The Agricultural Wages Board is an independent statutory body which sets minimum wage rates and other minimum employment terms and conditions for agricultural workers in England and Wales. The Board's functions exist in relation to each of the counties and combination of counties for which Agricultural Wages Committees have been established. There are 15 AWCs in England and 1 AWC in Wales. Most of the functions of AWCs have now been taken over by wider employment legislation or fallen into disuse, but they still have a role in the appointment of members of the 17 regional ADHACs (16 in England and 1 in Wales), which provide advice to local housing authorities on applications under the Rent (Agriculture) Act 1976 for re-housing workers in tied cottages. Chapter 2 of this consultation paper sets out in detail, the origins, status and functions of the AWB, AWCs and ADHACs.

Scope of the consultation

This is a Defra consultation on the future of the Agricultural Wages Board for England and Wales, the 15 Agricultural Wages Committees in England and the 16 Agricultural Dwelling House Advisory Committees in England.

The Agricultural Wages Committee and Agricultural Dwelling House Advisory Committee in Wales are devolved bodies, which fall within the responsibility of the Welsh Government. Therefore, they do not form part of this consultation exercise.

Impact Assessments

An Impact Assessment and an Equality Impact Assessment on the impact of the abolition of the AWB are published separately. You are also invited to comment on the Impact Assessments.

The 15 Agricultural Wages Committees in England are largely redundant bodies and the number of applications to the 16 regional Agricultural Dwelling House Advisory Committees in England has declined significantly over the last few years. It is considered that the impact of their abolition will be very minimal and it would be a disproportionate effort to collect evidence to carry out a detailed analysis. Consequently, we have

concluded that an Impact Assessment does not need to be published in respect of the proposal to abolish the AWCs and ADHACs in England.

Deadline for comments

The closing date for this consultation is 12 November 2012. Responses should be sent to the following email address: awbconsultation@defra.gsi.gov.uk or by post to Dermot McLnerney at Defra, Area 8E, 9 Millbank, c/o 17, Smith Square, LONDON SW1P 3JR.

Confidentiality

In line with Defra's policy of openness, at the end of the consultation period, copies of the responses we receive may be published in a summary of the responses to this consultation. If you do not consent to this you must clearly request that your response be treated as confidential. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. Respondents should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request in order to comply with obligations under the Freedom of Information Act 2000.

Compliance with the Consultation Principles

This consultation complies with HM Government's Consultation Principles which can be found at www.bis.gov.uk/policies/bre/consultation-guidance

Chapter 2: Background to the Agricultural Wages Board (AWB), Agricultural Wages Committees (AWCs) and Agricultural Dwelling House Advisory Committees (ADHACs)

Section 1 – Agricultural Wages Board

Introduction

Statutory employment protection for workers in all sectors of the economy, other than agriculture, is set out in the National Minimum Wage Act 1998 and the Working Time Regulations 1998. Employment protection for agricultural workers employed in England and Wales is provided by the Agricultural Wages Order, made each year by the Agricultural Wages Board for England and Wales under the Agricultural Wages Act 1948.

What is the Agricultural Wages Board and what does it do?

The 1948 Act established the Agricultural Wages Board (AWB) in its present form with a statutory duty to set an agricultural minimum wage rate (AMW) and discretionary powers to set other terms and conditions of employment for workers in the agriculture and horticulture industries. The AWB is composed of eight representatives of employers nominated by the National Farmers' Union (NFU); eight representatives of workers nominated by Unite; and five independent members, including the Chairman, appointed jointly by the Secretary of State for Environment, Food, and Rural Affairs and Welsh Ministers.

The Board meets each year to make an Order which sets the agricultural minimum wage rates and other terms and conditions which will apply from October of that year. Under the terms of the legislation the Board is not allowed to set the AMW at a rate which is lower than the National Minimum Wage. The Board's proposals for the Order are advertised in the trade press, normally the Farmers Weekly, Horticulture Week and the Land Worker. The Board is required by statute to give a minimum of fourteen days notice of its proposals, but in practice employers and workers are given about four weeks to make representations on the Board's proposals. The Board then holds a meeting to consider the representations and to decide whether to confirm the proposals.

The Agricultural Wages Order 2012

The current Order – the Agricultural Wages Order 2012 - provides for six different grades of agricultural worker determined according to responsibilities/qualifications with a different agricultural minimum wage for each grade. Current agricultural minimum wage rates are as follows:

Grade 1	£ 6.21	Grade 2	£ 6.96	Grade 3	£ 7.66
Grade 4	£ 8.21	Grade 5	£ 8.70	Grade 6	£ 9.40

Other terms and conditions

The Agricultural Wages Order also sets other minimum terms and conditions. These are:

- Specific rates for overtime, payable after 8 hours work a day or 39 hours a week;
- Payment of on call and night allowance;
- Enhanced annual leave entitlement on a sliding scale (up to 31 days for the equivalent of a full time 5 day worker);
- Entitlement to bereavement leave (up to 4 days paid leave for the death of a parent or child and up to 2 days paid leave for the death of a sibling, grandparent or grandchild);
- Payment of birth or adoption grant;
- Payment of dog allowance;
- Specific pay rates for apprentices according to age and year of apprenticeship;
- Specific pay rates for workers of compulsory school age;
- Entitlement to the agricultural minimum wage for agricultural students on a work placement of less than one year; and
- Entitlement to agricultural sick pay after 52 weeks service, which is at least a worker's basic pay for normal hours worked.

Provision of Accommodation

The Agricultural Wages Order also sets down specific terms and conditions in respect of the provision of accommodation to workers. These are that:

Where a worker's contract requires the worker to live in a house provided by the employer, the employer may deduct not more than £1.50 per week.

Where a worker's contract requires the worker to live in accommodation (other than a house) the employer may deduct not more than £4.82 per day, provided that the worker has worked for a minimum of 15 hours for their employer.

If the accommodation is provided to a worker, but it is not a condition of their contract that they are required to live there, then the National Minimum Wage accommodation offset provisions apply. These require that a worker must be paid at least the correct statutory rate for the number of hours worked minus £ 4.82 for each day that accommodation has been provided.

A copy of the full Agricultural Wages Order for 2012 can be found on the Defra website at www.defra.gov.uk/food-farm/farm-manage/wages/.

Secretariat support for the Agricultural Wages Board

Secretariat support for the Agricultural Wages Board is provided by Defra and the role equates to approximately 0.50 % of a full time Higher Executive Officer.

Defra statisticians also prepare annual statistics on farm labour and wages, which are used by the Board to inform their annual wage negotiations.

Enforcement of the Agricultural Minimum Wage

The Agricultural Wages Act 1948 provides for enforcement of the agricultural minimum wage. The enforcement provisions in the 1948 Act are derived from the National Minimum Wage Act 1998, but modified as necessary to relate to agricultural workers and the agricultural minimum wage regime. Under the 1948 Act, the Secretary of State may appoint officers to enforce the agricultural minimum wage in England and the Welsh Ministers may appoint officers to enforce the agricultural minimum wage in Wales. These appointed officers are staff of the Rural Payment Agency in England and the Rural Inspectorate in Wales.

In practice, initial queries from agricultural workers and employers about the Agricultural Wages Order are directed to the Department for Business, Innovation and Skills' Pay and Works Right Helpline, which is the central point for all workers regarding information about statutory minimum pay and employment conditions. If a worker has a specific complaint about underpayment of the agricultural minimum wage, this is passed to the Agricultural Wages Team (AWT) at Defra, which will investigate the complaint. The AWT will ask the Rural Payments Agency in England and the Rural Inspectorate in Wales to carry out an agricultural wages inspection to obtain information in order to reach a decision on whether an underpayment or breach of the terms and conditions of the Wages Order has occurred. If the AWT considers that a worker has a valid complaint and an employer is not willing to reimburse the workers, Defra may take enforcement action on behalf of the worker, including taking a case to an Employment Tribunal if necessary.

Defra policy is to take enforcement action only upon receipt of a specific complaint from a worker and the Department does not undertake any risk or sample based enforcement. Individual workers may also take action through a civil court or employment tribunal to recover any arrears of pay owed to them by an employer.

Section 2 – Agricultural Wages Committees

What are the Agricultural Wages Committees and what do they do?

The Agricultural Wages Act 1948 also established a number of Agricultural Wages Committees (AWCs) covering the various counties in England and Wales. There are currently 15 Agricultural Wages Committees in England and 1 in Wales. The Committees in England cover the following counties or combination of counties:

Avon, Dorset, Somerset and Wiltshire

Bedfordshire, Cambridgeshire, Essex, Hertfordshire and Humberside

Berkshire, Buckinghamshire, Isle of Wight and Oxfordshire

Cheshire and Staffordshire

Cleveland, Durham and North Yorkshire

Derbyshire, Leicestershire, Lincolnshire, Northamptonshire and Nottinghamshire

Devon, Cornwall and Isles of Scilly

Hereford and Worcester, Gloucestershire, Warwickshire and West Midlands

Humberside

Kent, Surrey, East Sussex and West Sussex

Lancashire, Greater Manchester and Merseyside

Norfolk and Suffolk

Northumberland, Tyne and Wear and Cumbria

Shropshire

South Yorkshire and West Yorkshire

There is a separate AWC in Wales, which does not form part of this consultation exercise.

Each AWC in England comprises a chairman elected by the AWC, two independent members appointed by the Secretary of State in England and an equal number of members representing employers and workers, with the employers' representatives nominated by the NFU and the workers representatives nominated by Unite.

When originally established, the AWCs had powers to:

- issue permits in respect of disabled workers to allow the employer to pay a lower rate than the agreed agricultural minimum wage rate;
- award additional wages for piece work in certain cases;
- revalue the benefit in kind attributable to a house provided by an employer to a worker;
- approve arrangements whereby premiums may be received in respect of learners and apprentices; and
- appoint members of Agricultural Dwelling House Advisory Committees (ADHACs -- which provide advice on applications by farmers for re-housing agricultural workers).

The power to issue permits in respect of incapacitated persons is contrary to modern UK and EU anti-discrimination legislation and has been repealed.

Over the years the duties of the AWCs regarding additional wages for piece work, the revaluation of the benefit in kind of a house provided by an employer and the approval of arrangements in respect of learners and apprentices have fallen into disuse.

The only remaining active function of AWCs is the appointment of members of Agricultural Dwelling House Advisory Committees (ADHACs), which provide advice on applications by farmers for re-housing agricultural workers.

The AWCs also have annual statutory duties to appoint a chairman and to provide a report of their proceedings to the Secretary of State. The appointment of a chairman is carried out at an annual general meeting. Defra staff provide secretariat support for these meetings.

Section 3 Agricultural Dwelling House Advisory Committees

What are Agricultural Dwelling House Advisory Committees and what do they do?

The Agricultural Dwelling House Advisory Committees (ADHACs) were established under the Rent (Agriculture) Act 1976 (“the 1976 Act”).

The 1976 Act provides for security of tenure for certain categories of agricultural worker, including retired workers and their successors, living in tied houses. Under the 1976 Act, an agricultural landlord can apply to a local authority to re-house a worker, former worker or their successor where:

- (i) vacant possession is or will be needed to house an agricultural worker;
- (ii) the landlord is unable to provide any suitable alternative accommodation; and
- (iii) the authority ought in the interests of efficient agriculture to provide the suitable alternative accommodation.

If a local authority is satisfied that the requirements above are met, it has to use its best endeavours to provide suitable alternative accommodation.

As part of the process, the 1976 Act provides that the local authority, landlord or existing tenant may apply to an Agricultural Dwelling House Advisory Committee (ADHAC) for advice on the case regarding the interests of efficient agriculture and the urgency of the application.

There is no statutory requirement to seek advice from an ADHAC; it is purely an optional part of the procedure. However, where advice is sought, the local authority is obliged to take full account of that advice. The advice from the ADHAC is admissible in any legal proceedings.

There are currently 16 regional Agricultural Dwelling House Advisory Committees in England. These cover the same combination of counties as Agricultural Wages Committees, other than that there are separate ADHACs for Cheshire and Staffordshire.

There is a separate ADHAC for Wales which does not form part of this consultation exercise.

ADHACs are convened as and when necessary to hear applications on re-housing. The members of ADHACs are appointed by the Chairman of the relevant regional Agricultural Wages Committee and compose an independent member who is the chairman, a member representing employers and a member representing workers in agriculture. The independent members are drawn from a panel of persons approved by the Secretary of State and the representatives of employers and workers are nominated by the NFU and Unite respectively.

Secretariat support for ADHACs is provided by Defra. On receipt of an application for ADHAC advice, the Defra secretariat will normally, at the request of the Chair of the ADHAC, commission an independent appraisal of the farming system on the holding, which is carried out by a private company ACORUS on contract to Defra. This normally covers the nature of the agricultural enterprise, for example the type of crops and/or livestock, the number of employed workers and family workers and any relevant information on accommodation available for housing agricultural workers. However, there is no statutory basis for this independent appraisal.

In most cases the ADHAC will meet at a local venue to consider the application and the landlord and the worker will be invited to attend or send a representative, for example a managing agent or a trade union official. In some instances, if it is not possible to meet, an ADHAC may be done via a telephone conference, but this is the exception rather than the rule.

ADHAC hearings are informal and both the landlord and tenant will have the opportunity to put their cases. ADHACs should in normal circumstances give their advice within 28 days of receiving a request, which will be in the form of a written report to the housing authority. At that point, the ADHAC's role ends and it will then be for the local authority to make a decision on the application for re-housing, taking into account the ADHAC advice. There is a statutory duty for the housing authority to tell the applicant its decision within two months of receiving the ADHAC advice.

Chapter 3: Why is the Government proposing the abolition of the AWB in England and Wales, and AWCs and ADHACs in England?

Section 1 - Agricultural Wages Board

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.

The reasons why the Government is proposing the abolition of the AWB are set out below:

A separate employment regime for agricultural workers is no longer necessary

The origins of the Agricultural Wages Board date from the Corn Production Act 1917 and the Agricultural Wages (Regulation) Act 1924. Following the Second World War, the legislation was consolidated in the Agricultural Wages Act 1948 ("the 1948 Act"), which remains the current legislation.

Hence, the agricultural wages legislation is based on circumstances prevailing in the immediate aftermath of the World Wars, when agricultural workers were often isolated, immobile and dependent on the local landowner for their livelihood and home. Therefore they needed the specific protection of a body which could determine wage rates on their behalf.

Since the establishment of the Agricultural Wages Board in 1948, employment legislation and protection for all workers has improved dramatically, both at national and EU level. In particular the introduction of the National Minimum Wage Act 1998 makes it illegal to pay workers less than a specified hourly minimum wage rate and the Working Time Regulations 1998 provides for statutory entitlement to 28 days holiday for all full time workers working 5 days a week.

Today there is also much greater awareness of workers' rights and increasing promotion of ethical trading. Social and technological changes mean that whilst some agricultural workers may still live and work in isolated rural areas, they are likely to be far more mobile and have better communications through mobile telephones and the internet.

Prior to 1993, there were 26 other Wage Councils in existence covering a range of different sectors of the economy and with responsibility for fixing a statutory minimum

wage. All these other Wage Councils were abolished by the Employment Rights Act 1993. At that time it was decided that the Agricultural Wages Board should continue for the time being, but the then Government indicated that its future should be kept under close review. Following the introduction of the National Minimum Wage in 1998 there is now little justification for the agricultural sector alone to be subject to a separate employment regime.

Simplification of employment legislation in the agriculture sector and to end confusion with the National Minimum Wage

Broadly speaking, the Agricultural Wages Order covers any activity normally considered to be mainstream farming, such as arable, poultry or dairy farming and livestock rearing. Forestry and horticulture are also covered, as is the processing and packing of produce prior to the first point of sale.

The difficulty is that some of the activities carried out by a farm business do not come within the definition of agriculture for the purposes of determining whether or not a worker is entitled to be paid in accordance with the Agricultural Wages Order. Hence, in practice, agricultural and horticultural businesses have to operate both the agricultural minimum wage and the national minimum wage regimes, which adds to their administrative burden.

For example, where a farm business has diversified into non-agricultural activities, such as a farm shop or bed and breakfast, staff employed in the farm shop or to help with bed and breakfast would not be covered by the Agricultural Wages Order, but by the National Minimum Wage and general employment legislation. There are also particular complications for on-farm packing businesses which pack and trim salad not only produce grown on the farm, but also bought-in produce. Under the definition of agriculture set out in the Order, packing of on-farm produce is covered by the agricultural minimum wage regime, but packing of bought in produce is not. Similar problems arise for on-farm dairies which process both on farm produced milk and bought-in milk. In these circumstances an employer will need to consider whether or not employees are employed in agriculture and attract Agricultural Wages Order remuneration rates as opposed to National Minimum Wage rates.

The position for livestock and poultry businesses is even more complicated as livestock and poultry rearing work would normally be considered agricultural work covered by the Agricultural Wages Order, but that is not necessarily the case for slaughter operations which may attract National Minimum Wage rates. Further, if after slaughter, packing of meat takes place on farm, then this activity falls back within scope of the Order.

Therefore there is a burden on employers to make an assessment of whether activities fall in or outside the scope of the Agricultural Wages Order (AWO), and to ensure that remuneration is adjusted accordingly. As can be seen from the examples above, what constitutes “agricultural” work for the purposes of the AWO may not necessarily be logical from a practical point of view. Whilst this may not pose a particular problem in respect of the hourly pay rate as an employer may well pay the same hourly rate regardless of whether work is “agricultural” or not, administrative difficulties could arise where an

employer needs to calculate entitlement to other AWO provisions, in particular, overtime, holidays and agricultural sick pay.

Disincentive to greater integration in the food supply chain

The requirement for farming businesses to operate dual regimes acts as a disincentive for on-farm packing and processing businesses to use home grown produce and encourages the use of imported food from abroad. This hinders the development of farming businesses and restricts job opportunities for workers. The abolition of the Agricultural Wages Board would end these discrepancies and encourage the growth of an integrated food supply chain which would offer better prospects for the agricultural sector as a whole.

The agricultural wages legislation inhibits modern employment practices

It is widely acknowledged within the industry that the agricultural wages legislation is outdated and inhibits modern employment practices. For example, it has, in practice, dissuaded businesses from offering annual salaries. This is because the way the agricultural minimum wage is enforced means that an agricultural worker must receive not less than the agricultural minimum wage (AMW) for the hours that he has worked in each pay reference period. Under the Agricultural Wages Order, a farming business may therefore find that it has acted unlawfully if pay, averaged over the hours worked in the course of the year, results in a worker receiving less than the AMW for the hours worked during a particular pay reference period. In these circumstances, an employer could be served with an Enforcement Notice under the Agricultural Wages Act demanding that he reimburse the agricultural worker for underpayment of the agricultural minimum wage.

The difficulties associated with offering annual salaries are detrimental to workers as it means that they do not have certainty in their financial planning, which can hinder their ability to obtain a mortgage or other financial services. In contrast to the Agricultural Wages Order, the National Minimum Wage does not operate to dissuade employers from offering payment based on salaried hours.

Similarly, there is no provision within the agricultural wages legislation for workers to be paid “fair” piece rates and any worker whose contract of employment provides for payment at piece rates must still be paid at not less than the hourly minimum rate of pay applicable to their grade or category under the Order. Payment of piece rates is particularly important in the horticultural sector for picking and harvesting crops, where good workers can earn considerably more than the agricultural minimum wage. The constraints within the Order mean that an employer has to take into account the possibility that he will need to pay even the slowest workers at the hourly agricultural minimum wage rate; and this can impact on productivity.

In certain circumstances, the NMW regime provides for payment of “fair” piece rates, which are determined by reference to the rate of performance of an average worker, although fair piece rates do not apply where an employer controls the workers’ hours.

Removal of administrative and regulatory burdens for farm businesses

A specific Defra objective is to support and develop farming and encourage sustainable food production. The Agricultural Wages Order imposes an unnecessary regulatory and administrative burden on farm businesses, which is not shared by any other sector of the economy and which hinders the achievement of the Defra objective.

The Agricultural Wages Order in notable respects provides additional and specific rights that are not reflected in wider employment legislation. For example, agricultural workers have more generous statutory minimum terms for holiday allowance and sick pay than other workers. It must also be questioned whether some of the provisions of the Order, such as entitlement to payment of a birth or adoption grant and paid bereavement leave – regardless of for how long a worker may have worked for an employer - are really appropriate as terms of statutory employment protection, rather than being left to the discretion of the employer and something to be mutually agreed between parties.

The Farming Regulation Task Force presented its recommendations to Government in May 2011 for reducing the administrative burden faced by farmers and food producers. These included support for the proposed abolition of the AWB and the separate agricultural minimum wage regime. The Government believes that abolition of the Board would remove an unnecessary layer of regulatory burden from farmers and allow them greater freedom to focus on their core business of farming. This would help to ensure a prosperous and sustainable future for the industry as a whole, increasing competitiveness and resilience across the food chain, which would be better for workers and employers alike.

Lack of flexibility for parties to reach their own agreements which suit their particular circumstances

The requirements of the Agricultural Wages Order are prescriptive and constrain flexibility between workers and employers to reach their own agreements. Employers' organisations, such as the Association of Labour Providers, argue that employers are discouraged from allowing workers to work over 8 hours a day or 39 hours a week because of the requirement to pay overtime. There is evidence that some businesses try to circumvent these provisions by operating as different companies. Similarly the requirement to pay agricultural wages sick pay after 52 weeks, over and above the normal statutory sick pay arrangements (SSP) which provide for SSP where a worker has been absent due to illness for at least 4 days, imposes an additional burden on farmers when compared to employers in other sectors. These constraints hamper the possibilities of the industry to offer flexible career opportunities and are neither beneficial to workers and employers, nor for the long term future of the industry.

¹ A copy of the Report of the Farm Regulation Task Force can be found at www.defra.gov.uk/publications/files/pb13527-farm-reg-task-report.pdf

The Agricultural Wages Order is difficult for workers and employers to understand

The Agricultural Wages Order itself is complex and both employers and employees can find it difficult to understand. The 2012 Order runs to sixty pages. It is time consuming for farmers to have to absorb the provisions of the Order and put them into practice. Each year farmers have to familiarise themselves with the changes made to the Order by the Agricultural Wages Board – and these changes are not necessarily confined just to upgrading pay rates. If farmers incorrectly interpret the provisions of the Order, they may find they have broken the law, with a consequent risk of enforcement action.

To **sum up**, the Agricultural Wages Board and agricultural minimum wage:

- adds to the administrative and regulatory burden on farm businesses, which dissuades farmers from employing workers;
- is no longer needed because of improved employment protection for all workers;
- hinders the development of growth and opportunities within the industry;
- inhibits the use of modern employment practices; and
- restricts the ability of employers and workers to come to their own agreements.

Therefore the Government believes it is in the interests of the future prosperity of the agriculture industry for the Agricultural Wages Board and agricultural minimum wage regime to be abolished.

Section 2 - Agricultural Wages Committees

The Government considers that the Agricultural Wages Committees are effectively defunct bodies which should be abolished.

The original functions of AWCs are now outdated. For example, previously the AWCs had powers to issue permits to enable employers to pay a disabled worker a lower minimum wage. Such functions are now contrary to EU and UK modern anti-discrimination legislation and have been repealed. Of their remaining functions:

- to award additional wages for piece work in certain cases;
- to revalue the benefit in kind attributable to a house provided by an employer to a worker;
- the approval of arrangements whereby premiums may be received in respect of learners and apprentices; and
- the appointment of members of Agricultural Dwelling House Advisory Committees (ADHACs), which provide advice on applications by farmers to local authorities for re-housing agricultural workers

The first three have fallen into disuse.

The function to award additional wages for piece work has fallen into disuse as all agricultural workers are now entitled to be paid at least the relevant hourly rate for their

grade regardless of output and the Agricultural Wages Board cannot set an hourly rate lower than the hourly National Minimum Wage rate.

There have been no requests for valuation of a worker's house since 1997.

Similarly, there have been no applications for approval of learners' premiums since 1983.

The only active function of AWCs is to appoint members of ADHACs. The number of requests for ADHAC referrals has declined significantly in recent years. There were only eight ADHACs in 2011 and if ADHACs were abolished, AWCs would have no remaining valid function. In this respect AWCs are effectively redundant bodies.

However, there remains an annual statutory requirement for each AWC to elect a Chairman and make a report to Ministers. For these purposes the AWCs hold annual general meetings, normally in January and February each year, in a local hotel in the relevant area of the AWC. This places a burden on public resources and expenditure as Defra is obliged each year to arrange and provide funding for annual general meetings of 15 separate bodies which no longer have an active role to play. The Government concludes that the 15 regional AWCs for England no longer serve a useful purpose, and are an unnecessary expense on the public purse, which should be abolished.

Section 3 - Agricultural Dwelling House Advisory Committees

There has been a significant reduction in the number of applications to Agricultural Dwelling House Advisory Committees, which the Government considers will continue into the future. In view of the limited number of requests for ADHAC advice, the Government feels that there can no longer be justification in providing for 16 regional bodies in England to hear such cases, and that it would be more appropriate for local authorities to commission their own advice on re-housing agricultural workers, if it considers it necessary to do so.

Changes in legislation as a result of the introduction of the Housing Act 1998, coupled with a reduction in the number of agricultural workers and changes in agricultural practices have led to a decline in the number of referrals to ADHACs.

During 2011 there were only nine applications for ADHACs in England of which one was invalid; hence there were only eight referrals to ADHACs last year. This means that there are fewer requests for ADHAC advice each year than there are ADHACs. Consequently, members of ADHACs now have such little opportunity to participate in active committees that there is a risk of loss of expertise.

There is no statutory requirement to seek advice from an ADHAC. A referral adds an extra, but optional layer to the procedure for re-housing a worker in tied accommodation. The local authority is not obliged to follow ADHAC advice, although if an ADHAC has been convened, the local authority is required to take its advice fully into account. A report by agricultural consultants ADAS in 1997 into the factors determining the future demand for

ADHACs identified that many local authorities dealt with applications for re-housing agricultural workers without ADHAC advice.

The existence or otherwise of ADHACs has no bearing on the statutory protection afforded to tenants under the Rent (Agriculture) Act 1976. Hence abolition of ADHACs would not diminish the rights of protected tenants. When considering applications for re-housing, local authorities would still be under an obligation to consider whether:

- a) vacant possession is necessary to house an incoming worker;
- b) the landlord is unable to provide any other suitable alternative accommodation; and
- c) whether it is in the interests of efficient agriculture to re-house the current occupant.

If they are satisfied that these conditions are met, the local authority will need to use their best endeavours to re-house the occupant in other suitable accommodation.

In the absence of an ADHAC to consult, local authorities may decide to commission their own independent advice to determine whether an application for re-housing meets these conditions; some local authorities, for example, those with statutory smallholding estates, may have their own internal rural experts who would be able to advise.

As indicated above, many local authorities have for some time already been taking advice on applications to re-house workers without referral to an ADHAC.

In the context of all these factors it seems difficult to justify retaining 16 separate advisory bodies in England (bearing in mind the necessary administrative support to maintain and service such bodies) to deal with what are now a limited number of requests for ADHAC advice.

Chapter 4: The impact of abolition of the AWB, AWCs and ADHACs

Section 1 – Agricultural Wages Board

What would it mean for agricultural workers and employers if the AWB and agricultural minimum wage were abolished?

If the AWB and agricultural minimum wage were abolished, the Government would amend legislation so as to provide protection for agricultural workers under the National Minimum Wage legislation and Working Time Regulations, as for workers in all other sectors of the economy.

The table below sets out the main provisions under the Agricultural Wages Order and the corresponding provisions that apply to workers in all other sectors of the economy. If the AWB and agricultural minimum wage regime were abolished, the provisions for other workers would apply to agricultural workers.

Measure	Provisions for Agricultural Workers	Provisions for Other Workers
Age from which minimum wage controls apply	Compulsory school age.	Above compulsory school age.
Range of minimum wage rates (£ per hour)	£3.11 for workers of compulsory school age. £ 6.21 to £9.40 for workers over compulsory school age.	£3.68 for workers aged 16 and 17 and above compulsory school age, but under 18. £ 4.98 for workers aged 18 to 20, but under 21. £6.19 for workers 21 and over.
Apprentices	£3.57 for workers in first year of their apprenticeship. £3.68 for workers in second year of their apprenticeship aged 16 to 17. £4.98 for workers in second year of their apprenticeship	£2.65 for apprentices under 19 or over 19 and in the first year of their apprenticeship. £4.98 for those over 19 and in the second year of their apprenticeship.

	<p>aged 18 to 20.</p> <p>£ 6.19 for workers in the second year of their apprenticeship aged 21 and over.</p>	
Working hours to which minimum rates apply	All hours, with higher minimum rates for overtime.	All hours, but no higher rates for overtime.
Overtime	Specific overtime rates apply after 8 hours a day or 39 hours a week.	No minimum statutory levels of overtime.
Entitlement to paid holidays	<p>For workers working a normal working week, 31 days.</p> <p>Maximum of 38 days for workers working more than 6 days a week.</p>	<p>For workers working a normal working week, 28 days.</p> <p>No additional entitlement for those workers who work a longer working week.</p>
Entitlement to rest breaks	Not less than 30 minutes where the daily working time is more than five and a half hours.	<p>Workers aged over 18, 20 minutes where more than six hours worked.</p> <p>Young workers – 30 minutes rest break, where more than four and a half hours worked.</p>
Level of holiday pay	<p>The daily rate for annual leave is the gross contractual weekly pay divided by the number of days worked each week by the worker.</p> <p>For workers whose gross contractual weekly pay varies, the day rate for annual leave is calculated by taking the worker's average pay over a 12 week period.</p>	<p>A week's pay for each week of leave calculated according to the type of work carried out.</p> <p>For workers on fixed hours and pay, it equals the amount due for a week's work.</p> <p>For workers on variable hours and pay (bonus, commission or piece workers), it equals the average hourly rate</p>

		<p>multiplied by the normal working hours in a week.</p> <p>For shift workers, it equals the average weekly hours of work in the preceding 12 weeks at the average hourly rate.</p> <p>For workers with no normal working hours, a week's pay is the average pay received over the preceding 12 weeks.</p>
Entitlement to paid sick leave and level of sick pay received	13-26 weeks on full pay after 1 year's continuous employment. Statutory Sick Pay (SSP) then applies.	SSP (currently £85.85) applies where a worker has been sick for at least 4 days or more and has average earnings of more than the Lower Earnings Limit, currently £107 per week.
Paternity/Adoption leave	Paternity and Adoption Regulations 2002 apply.	Paternity and Adoption Regulations 2002 apply.
Bereavement leave	As for other workers plus up to 4 days <u>paid</u> bereavement leave.	Right to <u>unpaid</u> time off to make arrangements.
Value of Benefits	Maximum deduction from minimum pay of £1.50 per week for a house or £4.82 a day for other accommodation.	Deduction of up to £4.82 a day for accommodation.
Working Dogs	£7.63 per dog per week.	None.

It is important to note that for existing agricultural workers the terms of a worker's employment contract which applied at the time the AWB were abolished would continue to apply until such time as the contract were varied by agreement between the employer and the worker, or until the contract came to an end. In other words, workers with contractual rights would continue to be entitled to those terms and conditions (which should be at least

as beneficial as the terms provided for in the final Agricultural Wages Order), even after the abolition of the Board. Moreover, agricultural workers will still be protected by the National Minimum Wage rate and must be paid at least the current National Minimum Wage rate, even if over time their contractual rate would otherwise have fallen below the National Minimum Wage level.

New workers coming into the agriculture industry after abolition of the Board, would not be entitled to the terms and conditions set out in the Agricultural Wages Order, but would be protected by the NMW and the protections afforded by wider employment legislation.

The abolition of the Agricultural Wages Board should make it simpler for farm businesses to employ staff and they will no longer have to familiarise themselves with both the National Minimum Wage and Agricultural Minimum Wage. It will be particularly beneficial for businesses which have to operate dual regimes. Therefore there should be time saving and a consequent reduction of administrative costs.

As in other sectors of the economy, employers and workers would need to agree terms and conditions of employment with each other without reference to the Agricultural Wages Order (AWO). As it is, the AWO only sets minimum terms and conditions and many workers and employers already agree terms and conditions more beneficial than those contained within the Order. It is hoped that industry organisations representing both employers and workers will work together to provide guidance to small businesses on suggested wage rates. However, in the absence of the Board there would be greater flexibility for workers and employers to come to arrangements which suit their own circumstances.

Wouldn't the abolition of the Agricultural Wages Board and agricultural minimum wage remove necessary protection from agricultural workers?

No. The Agricultural Wages Board was originally established when employment and social conditions were very different. Today all workers are protected by the National Minimum Wage legislation and the Working Time Regulations, as well as wider employment legislation. Therefore there is no longer a need to maintain a separate employment regime for agricultural workers. If the Board were abolished agricultural workers would benefit from the same level of employment protection as workers in all other sectors of the economy. In particular, the remit of the Low Pay Commission (LPC) would be expanded to require the LPC to take account of the conditions in agriculture when it makes its recommendations to Government.

Moreover, agricultural workers would retain existing contractual rights to which they were entitled at the time of abolition of the Agricultural Wages Board. Defra will make sure that advice for workers as to their entitlements and how they can protect their existing rights is available through the Pay and Work Rights Helpline.

Enforcement

Responsibility for enforcement of the national minimum wage amongst agricultural workers would transfer to HM Revenue and Customs which enforce the NMW on behalf of the Department for Business, Innovation and Skills. Defra would remain responsible for investigating and enforcing complaints about underpayment of the agricultural minimum wage and breaches of the terms and conditions of the Agricultural Wages Order which took place before Agricultural Wages Board was abolished for up to six years after the underpayment or breach occurred.

Impact Assessment and Equality Impact Assessment

An Impact Assessment and Equality Impact Assessment on the proposed abolition of the AWB and agricultural minimum wage accompany this consultation. You can find copies at on the Defra website. Alternatively, if you would like to receive hard copies, you may call Dermot McInerney at Defra on 0207-238-6523 and one will be sent to you. The Impact Assessment looks at the potential impact of the abolition of the AWB on:

- Wages and employment levels
- Agricultural wages sick pay
- Annual leave entitlement
- Provision of accommodation
- Removal of administrative of burdens

You are invited to comment on the estimates and assumptions made in the Impact Assessment and to let us have your own views on the impact, with your reasons.

Similarly you are invited to comment on the assumptions made in the Equality Impact Assessment and to let us have your own views on the impact with your reasons.

Section 2 – Agricultural Wages Committees

What would be the impact of abolishing the regional AWCs?

The Agricultural Wages Committees no longer carry out any active functions in respect of agricultural workers and employers. There would not be any impact for workers or employers if the regional AWCs were abolished.

However, if AWCs were abolished, it would mean that there would no longer be a body to appoint members of ADHACs. Therefore, if there was a decision to abolish AWCs, but retain ADHACs, it would be necessary to find an alternative mechanism to appoint members of ADHACs.

If AWCs were abolished, it would no longer be necessary to hold an Annual General meeting of the AWCs, which would be a resource saving for Defra.

Section 3 – Agricultural Dwelling House Advisory Committees

What would be the effect of abolishing the regional ADHACs?

There would no longer be regional ADHACs to provide advice on request for applications for re-housing agricultural tenants. Landlords would still be able to apply to their local authority to re-house a worker in tied accommodation. Likewise, when making a decision on the application, the local authority would still be required to consider whether there was an agricultural need to re-house the worker. However, the local authority itself would need on its own account to determine or seek advice on the urgency and agricultural need of the application on its own account. Given the limited number of referrals to ADHACs, 8 in 2011, the impact for local authorities would be minimal.

Wouldn't the abolition of ADHACs remove necessary protection from agricultural workers with protected tenancies?

No. The removal of ADHACs would not have any impact on the statutory protection afforded to tenants under the Rent (Agriculture) Act 1976. ADHACs are advisory bodies only and there is no requirement for applications for re-housing to be referred to an ADHAC. Many local authorities already consider applications for re-housing without seeking advice from an ADHAC.

If ADHACs were abolished local authorities would still be obliged to consider whether:

- a) vacant possession was necessary to house an incoming worker;
- b) the landlord was unable to provide any other suitable alternative accommodation;
- c) whether it was in the interests of efficient agriculture to re-house the current occupant;

and to use their best endeavours to re-house the tenant in other suitable accommodation if these conditions were met.

In summary the abolition of ADHACs would simply remove an extra but optional step in the process of considering applications for re-housing tenants with protected tenancies, but would not remove any necessary protection from such tenants.

Chapter 5 – If a decision is made to abolish the Agricultural Wages Board, Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees, how and when would the changes be implemented?

If following this consultation exercise, a decision is made to abolish the Agricultural Wages Board in England and Wales, and Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees in England, the Government will consider what legislative options would be suitable to make the changes.

One option could be to make an Order under the Public Bodies Act. This Act, as approved by Parliament, requires that Ministers consult on their proposals before laying a draft order which supersedes any previous announcements of a confirmed policy position in relation to the Agricultural Wages Board, Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees in England. Therefore, the Minister invites comments on these proposals as measures that might be carried forward by an order under the Public Bodies Act, subject to the outcome of this consultation. All responses, including those which propose an alternative to the Government's preferred option, will be given due consideration. However, the Public Bodies Act is not the only option and Government will also consider other available legislative routes.

The timing of when the changes would be implemented will depend on the Parliamentary process.

Chapter 6: Conclusion

The Government believes that the abolition of the Agricultural Wages Board and hence the agricultural minimum wage regime will simplify employment legislation and remove regulatory and administrative burdens from agricultural and horticultural businesses. It will allow the adoption of flexible and modern employment practices, which will ensure a vibrant, resilient and sustainable industry for the future, benefitting both employers and workers alike. The Government considers that given their reduced and limited functions it is difficult to justify the continued existence and public expense of the Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees. Therefore these thirty one regional bodies should likewise be abolished.

However, before making a final decision, the Government would like to know your views.

Consultation questions

You are asked to answer the following questions:

- 1. Do you agree that employment legislation in the agriculture sector should be simplified? If not, please give your reasons.**
- 2. Do you agree that agricultural workers in England and Wales should be brought within the same minimum employment terms and conditions as workers in all other sectors of the economy? If not, please give your reasons why you believe there should still be a separate regime for agriculture.**
- 3. Do you agree with the Government's proposal to abolish the Agricultural Wages Board, Agricultural Wages Committees, Agricultural Dwelling House Advisory Committees, and the agricultural minimum wage regime? If not, please give your reason why you disagree?**
- 4. Do you have any additional points or options you would like Ministers to consider before making their final decision?**