

Department for Environment, Food and Rural Affairs

Defra draft Equality Impact Assessment (EqIA) form

Directorate	Food and Green Economy
Unit	Food Policy Unit
Date	October 2012

Name of Policy/Guidance/Operational activity

Simplification of employment law. This will be achieved through the abolition of the Agricultural Wages Board for England and Wales and by amending legislation to bring agricultural workers in England and Wales within scope of the National Minimum Wage Act 1998 and Working Time Regulations 1998.

What are the aims, objectives & projected outcomes?

To lift regulatory burden from the agricultural and horticultural industries allowing businesses in these sectors to adopt flexible, modern employment practices such as the payment of annual salaries. To simplify the operation of minimum wage legislation by bringing agriculture in line with all other sectors of the economy and removing duplicate regimes for farm businesses which must currently comply with both sets of regulations.

Reducing burdens on businesses in the agricultural sector (88% of which employ either no staff or fewer than 5 workers) will make it easier for employment in the sector to expand. Harmonising the minimum wage arrangements across all sectors of the economy will make it simpler for new entrants to the industry to establish viable businesses.

The statutory minimum wage for agricultural workers would be set at the same level as workers in other sectors of the economy. The minimum rate would be fixed by the Secretary of State for Business, Innovation & Skills following consideration of the recommendation of the Low Pay Commission (LPC). The LPC's remit would be suitably amended to allow them to consider the requirements of agricultural workers.

1 Scope of the EqlA

1.1 Scope of the EqlA work

Defra has commissioned work by Professor Peter Dolton to investigate empirically the effect of the agricultural wage minima on employment and the level of wages in the past, and to provide an indication of what might happen in the future if the minima were removed. This included a literature review of previous research into the abolition of the Wages Councils in the 1980s and 1990s. However, much of this previous research was carried out in the early 1990s before the introduction of the National Minimum Wage (NMW) Act 1998. Therefore there can be no direct comparison of the equality impact arising following the abolition of Wages Councils in 1993 when there was no statutory underpinning of wages, with what might happen today if the agriculture minimum wage were abolished with the NMW in place. In this respect, it is difficult to draw any conclusions from the earlier research.

The National Farmers' Union (NFU) and Unite, who respectively represent employers and workers on the Agricultural Wages Board, were invited to give evidence on the likely equality impact of the abolition of the Board. However, their responses did not include detailed evidence of the nature of any impact.

We intend to address the absence of specific research or other data on the likely impact of the proposal to abolish the AWB by inviting views on the EqlA for each of the equality criteria. In each instance we will ask:

- Is the proposal likely to have an impact on the relevant group?
- If it is, what is the nature of the impact? and,
- If there is a negative impact, how can it be mitigated?

The details for providing comments on this EqlA are set out in section 3.2 below.

2 Collecting data

2.1 What relevant quantitative and qualitative data do you have?	
<p>Race</p>	<p>The 2009-10 Labour Force Survey indicates that only 1% of agricultural workers are non-white. However this masks the significant number of migrant workers from within the EU who may be at a disadvantage due to poor language skills and unfamiliarity with their rights under UK employment law. The 2010-11 Labour Force Survey indicates that 1.9% of the rural population was born in the EU but outside of the UK. More detailed information on the makeup of rural communities could be obtained from the 2001 census data. However, this is unlikely to provide an accurate picture of the current makeup of rural communities as this data was collected before the A8 and A2 countries joined the EU. More representative data will have been gathered during the 2011 census but this data will not be published until 2013.</p> <p>Migrant workers are likely to be employed in low skilled seasonal jobs in the horticultural sector attracting the lowest rate of the agricultural minimum wage. Of the total workforce in England and Wales around 42,000 are non-permanent workers. We do not know how many of these non-permanent workers are also migrant workers. A significant proportion of migrant workers are likely to come to the UK through the Seasonal Agricultural Workers Scheme (SAWS), which provides for an annual quota of 21,250 low skilled workers from Romania and Bulgaria to come to the UK for up to six months of the year to work in agriculture. SAWS is due to end in 2013. It is not possible to say what arrangements will replace SAWS.</p> <p>The body of research on the impact on workers of changes to minimum wage regimes is limited and none of it addresses the impact on migrant workers. Given that a significant proportion of migrant workers are employed on a casual/temporary basis, they are unlikely to retain contractual employment rights once the Agricultural Wages Board has been abolished (see discussion under Working Patterns). However, migrant workers will be protected by the National Minimum Wage Act and Working Time Regulations. In this respect, any negative impact is unlikely to have a disproportionate effect on migrant workers compared with seasonal workers from other groups.</p> <p>Moreover, migrant workers are likely to be amongst those supplied to the industry by gangmasters and therefore will also be protected by the gangmaster licensing legislation.</p> <p>You are invited to give your views on whether the proposal is</p>

	<p>likely to have an impact for particular racial groups.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
Religion/ belief & non belief	<ul style="list-style-type: none"> • We have no evidence of the impact of the policy on those with, or without religious belief, however we do not believe that any potential negative impact will affect these groups disproportionately. <p>You are invited to give your views on whether the proposal is likely to have an impact for particular religious groups.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
Disability	<p>We have no evidence of the impact abolishing the separate agricultural minimum wage will have for workers with a disability as we do not have recent figures for the number of workers with disabilities employed in agriculture.</p> <p>Until 1 October 2004 the Agricultural Wages Act made provision for the issue of certificates of exemption from the obligation to pay the agricultural minimum wage in respect of workers who were not capable of earning the full minimum rate due to a physical or other disability. This provision has now been repealed. The Report on Wages in Agriculture for the period 1 January to 31 December 2004 notes that 28 such certificates of exemption were revoked on 1 October 2004. The workers covered by permits of exemption were all transferred to the WORKSTEP and other Government sponsored supported employment schemes. Under the National Minimum Wage Act 1998, the same arrangements apply for employed disabled workers as for all other employed workers. As a result we do not believe there is anything inherent within the proposal which should disadvantage them.</p> <p>You are invited to give your views on whether the proposal is likely to have an impact for workers with a disability.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
Gender	<p>As at June 2010, 28% of workers in the agricultural sector are women. Of these only 18% were permanent workers, compared with 51% of men who are permanent workers. Professor Dolton's research has indicated that there would not be a significant difference between the impact on men and women's pay levels following abolition of the AWB. However, because fewer women are permanent workers, there could be a potential impact for women in that they will be less likely to be in the position to retain contractual protection once the AWB has been abolished. (See further discussion under Work Patterns).</p> <p>Abolishing the Agricultural Minimum Wage (AMW) will permit</p>

	<p>employers to introduce a range of modern employment practices which are not available to them under the current minimum wage regime. This would allow the development of a more flexible employment market in the agriculture sector which will make it more attractive to employers to offer work on seasonal and part time contracts. This could be of benefit to women workers in particular who may need to balance their work life with other responsibilities.</p> <p>You are invited to give your views on whether the proposal is likely to have an impact for different genders.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
Gender Identity	<p>We have no evidence of the impact abolishing the separate agricultural minimum wage will have for trans-sexual workers. We do not believe there is anything inherent within the proposal which should disadvantage them.</p> <p>You are invited to give your views on whether the proposal is likely to have an impact on gender identity.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
Sexual Orientation	<p>We have no evidence of the impact abolishing the separate agricultural minimum wage will have for gay, lesbian or bi-sexual workers. We do not believe there is anything inherent within the proposal which should disadvantage this group of workers.</p> <p>You are invited to give your views on whether the proposal is likely to have an impact on sexual orientation.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
Age	<p><u>Workers of compulsory school age</u></p> <p>Under the current minimum wage arrangements in agriculture minimum rates are set for workers of compulsory school age. The rate is currently £3.11. Under the NMW Act, there is no requirement to pay workers of compulsory school age, the national minimum wage.</p> <p>Data on the numbers of young people of school age working in the agricultural sector is not available. A 2009 survey by the BBC in which 101 of the 175 local authorities in England and Wales participated found that there were approximately 30,500 13 -15 yr olds in some kind of paid work. Only a small percentage of these</p>

would be engaged in agricultural work. The survey found that this figure had fallen by around 40% for the responding local authorities over the preceding 5 years. If the Agricultural Wages Board were abolished there could be an impact for children of school age, but they would be in the same position as school children working in other sectors, such as retail, hospitality and hairdressing.

School children who work will continue to enjoy the protections set out in the Children and Young Persons Act (1933) (the “1933 Act”). This Act gives local authorities powers to make byelaws concerning the employment of young people. The 1933 Act places limits on the types of work a young person can undertake and places a ceiling on the number of hours worked each week. Byelaws made under the 1933 Act may also make provision for the issuing of permits to employers who wish to employ a young worker.

We have obtained advice from the Gangmasters Licensing Authority, which regulates the supply of temporary workers to the agriculture sector, on the extent of exploitation among young workers. They have informed us that although they have received some intelligence concerning school age workers, none has resulted in formal action by the Authority. As a consequence we believe the risk of significant detriment to this cohort of workers is low.

Workers over school age but under 21

Under the agricultural minimum wage, workers aged 16 and over (other than apprentices in their first year of training) are entitled to the full adult rates applicable for the relevant grade of work.

Under the NMW regime, workers under 21 are not entitled to be paid the NMW rate, but there are specific youth rates, which are currently:

- £ 3.68 for workers aged 16 and 17, but under 18.
- £ 4.98 for workers aged 18 to 20, but under 21.

We do not have specific data on the number of workers in agriculture aged under 21, but it is estimated that it is roughly 9 % of the workforce, i.e. around 12,000 workers using 2010 data. If the AWB were abolished, workers under 21 who did not have contractual rights, would not automatically be entitled to be paid the adult rate of the national minimum wage. However, they would be entitled to receive either the under 21 or under 18 rate as appropriate. In this respect workers aged under 21 will be adversely impacted by the abolition of the AWB, but would nevertheless be in the same position as young workers in the rest of the economy. It is possible that the abolition of the agricultural wage may encourage more employment in agriculture amongst young workers.

Apprentices

Under the agricultural minimum wage, there are currently the

	<p>following hourly wage rates for apprentices:</p> <ul style="list-style-type: none"> • £ 3.57 for workers in the first year of their apprenticeship • £ 3.68 for workers in the second year of their apprenticeship aged 16 to 17. • £ 4.98 for workers in second year of their apprenticeship aged 18 to 20. • £ 6.19 for workers in the second year of their apprenticeship aged 21 and over. <p>Under the National Minimum Wage, the current hourly rate is £2.65 for apprentices under 19 or over 19 and in the first year of their apprenticeship. Apprentices over 19 and in the second year of their apprenticeship, would be entitled to the NMW youth rate for workers aged 18 to 20, i.e. £ 4.98.</p> <p>If the AWB were abolished there could be an impact for apprentices, but the position for apprentices working under a contract of employment is exactly the same as for other agricultural workers. This is, that the terms of the employment contract which exist at the time the AWB is abolished will continue to apply until such time as the contract is varied by agreement between the employer and the apprentice, or until the contract comes to an end. New apprentices coming into the sector may be paid at a lower rate than their predecessors, but as in other industries it will depend on supply and demand and the wider economic situation, and the abolition of the AWB could lead to an increase in apprenticeships in the agriculture sector.</p> <p>You are invited to give your views on whether the proposal is likely to have an impact on workers of different ages.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
<p>Working Pattern</p>	<p>For permanent workers, the terms of an employment contract which exists at the time the AWB is abolished will continue to apply until such time as the contract is varied by agreement between the employer and the worker, or until the contract comes to an end. This will be the case whether the terms are written, verbally agreed or implied by custom and practice.</p> <p>Existing workers employed on seasonal or fixed term contracts could be treated less favourably in the period following the abolition of the AMW than permanent workers. This is a consequence of the fact that workers employed on fixed-term contracts are less likely to retain contractual rights based on the terms of the Agricultural Wages Order (AWO) beyond the lifetime</p>

	<p>of their current fixed-term contract. However, such workers will be protected under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, which provide that a fixed-term employee has the right to the same pay and conditions as a comparable permanent employee unless the difference in treatment can be objectively justified.</p> <p>You are invited to give your views on whether the proposal is likely to have an impact on different working patterns.</p> <ul style="list-style-type: none"> • If it is, what is the nature of the impact? and, • If there is a negative impact, how can it be mitigated?
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2.2 What are the overall trends/patterns in this data?

Our preliminary assessment of the data available to us is that there could be an equality impact for some workers in respect of race, age, gender and working patterns. However, workers in these categories will not be in any different position than if they currently chose to leave the agricultural sector and take up work in another sector of the economy. Moreover, the abolition of the AMW will permit employers to introduce employment practices which are already established in the rest of the UK economy. The resulting more flexible employment arrangements in agriculture could be of benefit to young people, women and those whose circumstances require that they seek part time or seasonal work.

2.3 Please list the specific equality issues and data gaps that may need to be addressed through consultation and/or further research?

The specific equality issues that need to be addressed through consultation are in relation to the impact for the following categories of workers:

- migrant workers
- seasonal workers,
- young workers and apprentices, and
- female workers.

3 Involving and consulting stakeholders

3.1 Internal consultation and Involvement:

We have consulted colleagues from the Gangmaster Licensing Authority, which has responsibility for regulating labour providers who supply workers into the agricultural sector, particularly in relation to the impact for young people.

3.2 External consultation and involvement:

The heads of the NFU and Unite delegations to the AWB were invited to provide evidence to contribute to the draft equality impact assessment of the proposal to abolish the AWB. However, they did not come forward with any detailed information.

Comments are now invited from stakeholders, other interested parties and the wider public on the draft equality impact assessment on the abolition of the Agricultural Wages Board. These can be e-mailed to awbconsultation@defra.gsi.gov.uk or sent by post to Dermot McInerney at Defra, Area 8E, 9 Millbank, c/o 17, Smith Square, London, SW1P 3JR, and should be received by 12 November 2012.

4 Assessing impact

4.1 Assessment of the impact