



Department
for Environment
Food & Rural Affairs

www.defra.gov.uk

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

Summary of responses

December 2012 (Revised February 2013)

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Introduction

The Department for the Environment, Food and Rural Affairs has recently carried out a consultation on the future of the Agricultural Wages Board (AWB) for England and Wales, 15 Agricultural Wages Committees (AWCs) and 16 Agricultural Dwelling House Advisory Committees (ADHACs) in England. The Department has carefully considered the responses to the consultation and we will now be bringing forward measures to abolish the AWB, 15 AWCs and 16 ADHACs through an amendment to the Enterprise and Regulatory Reform Bill. The amendment will also make changes to the National Minimum Wage Act 1998 to ensure that agricultural workers in England and Wales are protected by the NMW. Separately, amendments will be made to the Working Time Regulations 1998 to bring agricultural workers within scope of this legislation. This document sets out a summary of the consultation responses and an overview of the Government's conclusions.

The Government wants to create 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.

At the same time the Government is committed to ensuring fair employment protection for workers and supports the National Minimum Wage. However, given the introduction of the National Minimum Wage and other improvements in employment legislation at national and European level, the Government no longer considers it is necessary to retain a separate employment regime in the agricultural sector. The agricultural wages legislation is outdated, inflexible and causes unnecessary duplication in the agricultural sector which is not imposed on any other sector of the economy.

Another key Government objective is to reduce the number of non-departmental public bodies. Most of the functions of the 15 AWCs in England have now been taken over by wider employment legislation or fallen into disuse. Their only remaining active function is to appoint members of the 16 ADHACs in England, which provide advice to local housing authorities on applications under The Rent Agriculture (Act) 1976 for re-housing workers in tied cottages. Due to changes in housing legislation the number of requests for ADHAC advice has fallen significantly and there are now fewer than 10 a year. Given their reduced and limited functions there is no longer justification for the continued existence and public expense of these 31 regional committees.

What will abolition of the Agricultural Wages Board and agricultural minimum wage regime mean for farm businesses and agricultural workers?

Farm businesses will be able to recruit workers on the same terms and conditions as other rural employers. In particular, it will make it easier for farm businesses to offer flexible modern work packages, which suit the circumstances of the business and the employee.

The National Minimum Wage (NMW) legislation and Working Time Regulations will be amended to bring agricultural workers within scope of the legislation. Agricultural employers will be required to provide workers with at least the minimum terms of pay and conditions set down in the legislation. However, as in other areas, many employers will give more competitive remuneration packages and benefits to attract and retain skilled workers.

For existing agricultural workers, the terms of a worker's employment contract which applied at the time the AWB were 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. In other words, workers with contractual rights will 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 NMW rate and must be paid at least the current NMW rate, even if over time their contractual rate falls below the NMW level.

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

Agricultural workers who are supplied through a gangmaster will have the added protection of the gangmaster licensing legislation. This means that farm businesses which recruit labour through a gangmaster will be required to use a gangmaster that is licensed. It is a criminal offence to supply labour without a licence or use an unlicensed labour provider. Gangmasters will have to demonstrate that agricultural workers who are supplied to work in a farm business are paid in accordance with at least the NMW in order to be eligible for a gangmaster licence

When will the changes to the agricultural minimum wage regime workers come into place?

This will depend of the passage of the Enterprise and Regulatory Reform Bill through Parliament, but it is hoped that the agricultural minimum wage regime will be abolished and the NMW introduced into the agricultural sector as from 1 October 2013.

Will there be any amendment to the National Minimum Wage rates to take account of agricultural workers?

The Low Pay Commission (LPC) provides recommendations to Government on the level of the National Minimum Wage (NMW) rates. The remit of the LPC will require it to take account of the conditions in agriculture when it makes its recommendations to Government. Therefore it will depend on the recommendations that the LPC makes as to any changes to the NMW rates to take account of agricultural workers.

However, the six different agricultural minimum wage rates for different grades of agricultural worker will not be retained and there will be a single minimum wage rate across all sectors of the economy.

Who will enforce the National Minimum Wage within the agricultural sector?

Her Majesty's Revenue and Customs will enforce the NMW in the agricultural sector on behalf of the Department for Business Innovation and Skills.

However, Defra will 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 take place before the regime is abolished for up to six years after the underpayment or breach occurred.

What will abolition of the 15 Agricultural Wages Committees and 16 Agricultural Dwelling House Advisory Committees mean for farm business and agricultural workers?

A farm business or worker will no longer be able to apply to an Agricultural Wages Committee to revalue the benefit in kind of a house provided to a worker under the terms of his employment contract. This will mean that where a house has been provided to a worker by an employer before the abolition of the Agricultural Wages Order, the employer will not be able to deduct more than £1.50 per week benefit in kind from the worker until either the contract comes to an end or is mutually varied by both parties. However, there have been no requests for revaluations since 1997.

There will no longer be regional ADHACs to provide advice on request for applications for re-housing agricultural tenants. However, landlords will still be able to apply to their local authority to re-house a worker in tied accommodation. When making a decision on the application, the local authority will still be under a statutory duty to consider whether there is an agricultural need to re-house the worker and the urgency of the application. However, the local authority will no longer be able to look to an ADHAC to provide advice, but will have to determine the urgency and agricultural need of the application on its own account, or seek independent advice to assist it in doing that. Many local authorities already successfully operate their duties under this legislation without seeking advice from an ADHAC.

The abolition of ADHACs will not have any impact on the statutory protection given to tenants in tied accommodation, or their spouses or dependants.

When will these changes for Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees come into place?

As indicated above, this will depend of the passage of the Enterprise and Regulatory Reform Bill through Parliament. However, there will be specific transitional provisions to ensure that any ongoing requests for re-valuation of benefit in kind of an agricultural dwelling house or applications for ADHAC advice can be completed before the AWCs and ADHACs are abolished.

How will farm businesses and agricultural workers be made aware of the changes?

Defra will ensure that information about the changes is widely available to workers and farm businesses on the Defra website, through the Pay and Work Rights Helpline and in the farming media.

Overview of the consultation

Responses were received from a range of industry organisations, unions, charities and individuals.

There were 922 responses received before the end of the consultation period of 12 November and 24 responses received after the closing date, making a total of 946 responses.

Of the responses 775 were by e-mail, 160 by post and 11 by both e-mail and post.

All the responses were considered and analysed.

Question 1: Do you agree that employment legislation in the agriculture sector should be simplified? If not, please give your reasons

- Total number of responses: 946
- Respondee who answered 'yes': 397 (42%)
- Respondee who answered 'no': 69 (7%)
- Respondee who gave no clear indication: 480 (51%)

The comments of those who answered 'yes' to this question were that the Agricultural Wages Order is outdated, complex, difficult to interpret and does not apply to modern day farming practices. Therefore there is no justification for a separate employment regime for agriculture and it should be brought into line with all other sectors.

Respondee made the point that many farms have now diversified and carry out non-agricultural activities and it is a burden to have to run two wage systems. A particular problem is for on-farm pack houses, where, because of the dual regimes, workers who are carrying out the same job need to be paid different minimum wage rates depending on whether they pack produce grown on the farm or produce which has been bought in.

There were also views from respondee that the Agricultural Wages Order discourages businesses from employing young workers and that the rigid terms and conditions encourage "casualisation" preventing the development of a professional workforce, for example by hampering the development of payment of annual salaries.

The comments of those who answered 'no' to this question were that the existing agricultural wage regime has worked well over a number of years and there is no reason to change it. Many farmers find the system helpful and its removal will lead to problems. There were respondee who saw merit in simplification of the agricultural minimum wage regime, but not to the extent of abolition of the AWB itself, nor at the expense of endangering industrial relations.

Question 2: Do you agree that agricultural workers in England and Wales should be brought within the same minimum employment terms and conditions as in all other sectors of the economy? If not, please give your reasons why you believe that there should still be a separate regime for agriculture?

- Total number of responses: 946
- Respondee who answered 'yes': 336 (36%)
- Respondee who answered 'no': 171 (18%)
- Responder who gave no clear indication: 439 (46%)

The comments of those who answered 'yes' to this question were that given the wider improvements in employment protection in all other sectors of the economy, it is no longer necessary to have a separate regime in agriculture. It was considered that the increased mobility of the work force has removed the need for agriculture to be treated any differently from other industries.

Respondee said that the Agricultural Wages Order (AWO) is outdated and constrains the flexibility of businesses to operate in an efficient manner. It discourages employment as many employers feel unable to take on workers because the terms of the AWO are too restrictive. In particular, the AWO does not take into account any variations within the different sectors within agriculture. This means that the pay increase determined by the AWO is imposed across the industry and does not reflect the varying fortunes of the individual sectors. The majority of workers are employed in horticulture and the AWO discourages horticultural businesses from employing workers, which is instead turning to greater mechanisation. The economy as a whole is made up of thousands of small businesses that do not require an independent body to set wages and there is no need for a separate employment regime for an industry which is characterised by a diversity of business types and producers.

Those who answered 'no' to this question commented that agriculture is a unique industry, where workers have to have specific skills to handle machinery, livestock, chemicals and are required to work long, unsociable hours, often in inclement weather. The industry has a poor health and safety record and many workers are required to live in tied accommodation. The existence of the AWO has helped to minimise wage disputes and ensure fair wage and conditions in an industry where there is a high degree of migrant

labour and many workers are provided by gangmasters. There are no other workers who are in the same position as agricultural workers, other than fisherman and the retention of a separate employment regime is justified.

The views of the respondees were that the AWO offers workers a whole range of protections, such as the six different minimum grade rates, overtime, sick pay, enhanced annual leave, which are not covered by the National Minimum Wage (NMW). The NMW is not a suitable bench mark for the agriculture sector and the removal of the AWO could see deterioration in terms and conditions for agricultural workers.

However, some respondees felt that certain aspects of the agricultural minimum wage regime could be brought into line with employment legislation in other sectors, but that some differences, such as the different minimum pay rates, should be retained.

Question 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 minimum wage regime. If not, please give your reason why you disagree?

- Total number of responses: 946
- Respondeees who answered 'yes': 347 (37%)
- *Respondeees who answered 'no': 580 (61%)
- Respondeees who gave no clear indication: 19 (2%)

Of the respondeees who answered 'no' to this question 242 responses came from the organisation "Change.org.uk", which generated an automatic e-mail for members registering with the website.

Those who answered 'yes' to this question commented that the Agricultural Wages Board (AWB) , Agricultural Wages Committees (AWCs) and Agricultural Dwelling House Advisory Committees (ADHACs) are outdated institutions which are no longer needed in the twenty-first century. In particular, the AWB is no longer necessary because of the introduction of the National Minimum Wage (NMW). Abolition of the AWB will allow employment in the agricultural sector to be on an equal footing with other industries. Most farm businesses are already familiar with the NMW as they have to operate it for other areas of the business, which are not covered by the Agricultural Wages Order (AWO).

The views of respondeees were that the AWB has discouraged business investment in the industry and that removal of the agricultural minimum wage regime will increase competition and encourage employment, particularly of young workers. The AWO is difficult to understand, creates inefficiencies and unnecessary costs and duplication. The removal of the AWO will allow greater flexibility in working hours and the payment of annual salaries. A majority of agricultural workers are already paid well above the agricultural minimum wage rates and good employees are hard to find, so market forces will ensure that wage rates will be maintained. Agriculture is a professional business and employers and employees no longer need the AWB to set terms and conditions. They should have the freedom to reach their own agreements to suit individual circumstances, as is done in all other sectors of the economy. Hence the AWB has served its purpose.

Respondees commented that the functions of the AWCs and ADHACs are now obsolete and there is no justification for retaining them.

The views of those who answered 'no' to this question were that the AWB serves a useful purpose in providing guidelines for farmers and employers and has helped to preserve harmonious relations within the sector. Respondees commented that they are concerned that the removal of the AWB will see a reduction in wages for workers and some commented about the pressure on farmers from supermarkets to cut costs. Respondees felt that abolition would lead to an unskilled workforce and greater use of migrant labour. Some respondents expressed views that removal of the agricultural minimum wage will particularly discourage young workers from coming in to the industry and that there could be exploitation of workers by unscrupulous employers and gangmasters. Workers and employers will have to conduct wage negotiations which some respondents felt could be stressful and lead to disharmony within the sector.

Some respondents also commented that there could be a detrimental impact on the wider rural community. Others thought that the removal of the AWB would not lead to a reduction in red tape, but could increase regulatory burden.

Respondees who answered 'no' commented that the AWCs and ADHACs continue to serve a useful purpose. It was felt that the AWCs act as a useful forum for discussing local issues and that ADHACs have a valuable role to play in providing advice at a local level on applications for re-housing.

Some respondents considered that the AWB should be maintained, but not the AWCs and ADHACs, and others felt that the AWC and ADHACs should be retained and not the AWB.

There was also a view from some respondents that there should be a simplification of the AWB and also AWCs and ADHACs.

Question 4: Do you have any additional points or options you would like Ministers to consider before making their final decision.

Other common additional comments made by respondees were:

- Abolition of the Agricultural Wages Board and agricultural minimum wage regime should be carried out as soon as possible
- The Government should look at other areas where regulatory burden on farmers could be reduced, including the gangmaster licensing legislation.
- The consultation period was too short and there had not been adequate publicity.
- The Agricultural Wages Board should be retained, but simplified and modernised.
- The Gangmasters Licensing Authority should be maintained and adequately funded.
- There needs to be effective communication of what the changes will mean for agricultural workers and employers.
- Sufficient resources should be provided to Her Majesty's Revenue and Customs to ensure the effective enforcement of the National Minimum Wage regime in the agriculture sector.
- The National Farmers Union should organise a voluntary committee to provide guidance on wage setting.
- The Northern Irish and Scottish Agricultural Wages Boards (AWB) are being retained and it will be unfair to workers in England and Wales, if the AWB for England and Wales is abolished.