

**October 2014**

**SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS  
TO THE LOW PAY COMMISSION CONSULTATION ON THE  
OCTOBER 2015 NATIONAL MINIMUM WAGE RATES**

**Contact**

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**Introduction**

The Association of Labour Providers (ALP) is a trade association supporting and representing organisations that supply seasonal, agency and contingent labour into the UK food production, horticultural and agricultural sectors. The ALP has approximately 270 organisations that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the ALP Constitution. ALP member organisations supply approximately 60-70% of the temporary workers into the food supply chain. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters Licensing Authority (GLA). The ALP provides a range of services to help labour providers achieve labour standards compliance and good practice.

The ALP's members predominantly provide workers for unskilled work in the agriculture and food packing and processing industries. Labour providers operate in a very competitive market largely resulting from the downward pressure on costs exerted by the supermarkets. It follows that margins are thin, although just adequate to allow viable businesses to continue. Market pressures mean that unskilled work is either at, or very close to, national minimum wage (NMW).

Very few British workers are willing to work at or near NMW in such roles. For many years these irregular low-paid jobs have been largely filled by migrant workers, able to earn more than they can in their home country.

It is to be noted that pay and terms for temporary agency workers are set by the client i.e. the labour user, not the labour provider.

**ALP Response Summary**

1. NMW levels should support the supply of labour.
2. It is time for an overhaul of NMW.
3. The accommodation offset arrangements work to the disadvantage of workers by removing the option to have accommodation provided by an employer.
4. The HMRC interpretation that a deduction from wages for the optional use of transport to work reduces pay for national minimum wage (NMW) purposes is at best questionable and works to the disadvantage of workers.

## 1. Market Labour Supply and Demand Factors

- a) **Tightening Labour Supply** – For the first time since 2003 the ALP is beginning to see signs of a tightening of labour supply. The consequences of this are outlined in the following ALP press release:

### Labour costs predicted to rise – ALP Press Release – 22<sup>nd</sup> September 2014

With the number of people in employment at the highest level since records began, the food industry should prepare itself for an increase in contingent labour costs, according to the Association of Labour Providers (ALP).

With unemployment falling to 6.2 %, the lowest since 2008, and more people in work in the UK than ever before, labour providers are reporting the first signs of a tightening of labour supply in some areas of the country.

As the ALP releases its annual agency labour charge rate guidance, director David Camp says: “Labour providers fulfil a key supply chain security role in sourcing and supplying the high quality workforce that keeps the UK’s food and agriculture sectors working. For many years there has been a downward pressure on labour provider margins and this has now come to an end.

“With a tightening labour supply come increased costs in the form of additional recruitment expenditure and increased churn which add to the operating costs of labour providers. The law of supply and demand will prevail, and those labour providers that can source and supply a high quality, reliable workforce whilst complying with legal and ethical standards will charge an appropriate margin for their service.”

David adds: “Those hiring businesses that pay unrealistically low rates for labour are knowingly or recklessly conniving in illegality, as these rates can only be achieved either through worker exploitation or tax evasion, or both. As a result, the rate paid by growers and food producers for labour is a key variable that the Gangmasters Licensing Authority monitors when looking for exploitation.”

ALP has now issued all its members with *The October 2014 Labour Provider Charge Rate Guidance*, which includes the new national minimum wage rates, new Scottish agricultural wage rates, pensions auto-enrolment charges and other updates.

- b) **Abolition of the England Agricultural Wages Order** – In October 2013 the agricultural minimum wage regime in England ended and reverted to the national minimum wage. Separate agricultural wages structures remain in Northern Ireland, Scotland and Wales.

There has been no evidence collated, as far as the ALP is aware, to analyse the impact on pay and terms of the abolition of the agricultural minimum wage regime. Some labour providers report moving away from arrangements that provide for time and a half for overtime working that existed in the Agricultural Wages Order.

- c) **Abolition of the Seasonal Agricultural Workers Scheme (SAWS)** – The SAWS scheme was abolished by government at the end of 2013 on the basis that there should be sufficient workers from within the UK and EU labour markets

to meet the needs of the sector. Prior to abolition of SAWS, which coincided with the ending of transitional arrangements, the Home Office issued visas for 21,250 Bulgarian and Romanians to work in the UK.

SAWS is naturally popular with farmers as it provides a secure labour supply with workers mobility restricted by visa.

In 2014 labour supply has been generally sufficient to meet demand. However, both the proportion of “no-shows” and labour turnover has increased. The position for 2015 and 2016 is less clear with increasing concern of labour shortages.

In September 2014 the National Farmers Union said that there are now not enough bodies to provide the labour needed to meet demand for British horticulture and that the UK government must make it easier for migrant workers from non-European countries to gain temporary visas or put the country’s fruit and vegetable harvest at risk. The Home Office responded saying that there were no plans to bring in a new scheme to allow nationals from non-EU countries such as Ukraine, Russia and Turkey to work on UK farms during the peak harvest seasons and that industry should be able to meet demand from the UK and the rest of the EU.

There has been no evidence collated, as far as the ALP is aware, to analyse the impact on pay and terms of the abolition of SAWS. It is to be expected that a shortage of labour will create an upward pressure on pay rates.

- d) **Pensions Auto-Enrolment** – Most labour providers, other than the very smallest, have now staged for pension auto-enrolment. Initially the employer contributes a minimum of 1% of qualifying earnings which rises over time to 3% in 2018.

The opt-out rates are very small. Typically 95% of workers remain in the scheme. The cost to employers of pensions auto-enrolment should be a factor taken into consideration by the Commission.

- e) **Migrants in low-skilled work** - The Home Office Migration Advisory Committee (MAC) has issued its report [Migrants in low-skilled work](#) in July 2014. This is an accurate and well-founded report which is relevant to the LPC evidence gathering process. The MAC report highlights that:

- In 2013 some 12.9 million people aged 16-64 were working in low-skilled occupations, amounting to 45 per cent of total employment (16-64). Of these, 2 million were foreign-born, the majority from outside the EU. Practically half of all *packers, bottlers, canning and fillers* jobs are carried out by the foreign-born.
- Where MAC engaged with the private sector they found good evidence to support a very strong case of fair and proper treatment of migrant and UK workers with absolutely no indication of discrimination against UK workers.
- Employers state that migrant workers, from Central and Eastern Europe in particular, are more flexible and more geographically mobile, are perceived to have a better work ethic and work harder and are stronger in terms of “soft skills” including reliability, team-working and confidence than British workers. Many British workers applying for low-skilled jobs lack basic numeracy and literacy skills and many migrants have higher level qualifications.

In recommending areas for future policy focus, MAC concludes: Reducing the growth in the reliance on migrant labour in certain occupations will not happen without fundamental changes to policy including greater labour market regulation in some sectors, more investment in education and training, better wages and conditions in some low waged publicly-funded sector jobs, improved job status and career tracks, a decline in low waged agency work, and addressing any abuse of zero-hours contracts.

The UK food and agricultural sectors are reliant on workers from the European Economic Area (EEA). As labour supply tightens, the UK will face increasing competition with other EEA nations such as Germany for sufficient supply of labour to ensure that UK business is not hampered by an inability to access workers.

In summary labour supply and demand factors the LPC should take account in its recommendations to government for the 2015 NMW rates are:

- There are pressures, predominantly around increased labour demand and tightening of labour supply that will create upward pressure on pay for low skilled workers in the food and agricultural sectors.
- Continued economic growth is reliant on a sufficient supply of labour. Minimum pay rates in comparison to other main EEA migrant employing nations is a factor LPC should examine to ensure UK business is able to source a reliable and quality workforce to meet its needs.

## **2. National Minimum Wage - Legislation, Guidance and Enforcement**

- a) **What is the national minimum wage?** – Increasingly industry is being asked and pushed to pay “The Living Wage”. This begs the question “Is the national minimum wage not a living wage? If not, what is it?”

There should be clarity re-established regarding the national minimum wage. What is it? How is it calculated? How does it interplay with the Living Wage?

- b) **The National Minimum Wage Regulations** – The Regulations are complex. They are written in a form of Orwellian Doublespeak that makes interpretation challenging for any objective reasonable person, be that the man on the street or travelling on the Clapham omnibus.

It is time for an overhaul of the National Minimum Wage Regulations.

- c) **Guidance** - GOV.UK generally does a good job in getting the key points of the NMW across. However GOV.UK NMW guidance is very basic and certain sectors need better direction on the more challenging issues they may have.

- The Government should put in place, and maintain, effective, clear and accessible guidance on aspects of the minimum wage, particularly where there is significant evidence of ignorance or infringing practice.
- Trade associations representing in low pay sectors should be able to access and work with NMW Technical Advisors to develop their own sector relevant guidance and to assist with complex and challenging issues.

- d) **Enforcement** - The Migration Advisory Committee (MAC) report [Migrants in low-skilled work](#) found that:

“the incentives to comply are weak. There are some serious gaps in protection, especially for migrant workers. There exist real disincentives for individuals to challenge poor employment practices and to raise grievances.

UK labour law is not providing a minimum level of protection in all cases resulting in a playing field that is not level. There is the risk of a continuum of exploitation starting with failure to pay minimum wages and ensure decent working conditions, leading to workers being forced to accept sub-standard accommodation, being forced to pay for things that they do not need through deductions from their wages, having their passport retained, and losing both work and accommodation with no prior notice.

The evidence is consistent with increasing migrant exploitation enabled by insufficient regulation of recruitment practices. MAC is concerned that there is a danger that non-compliance and exploitation are no longer marginal and exceptional issues but instead moving toward becoming structural features of the UK’s low-wage labour markets, at least in certain areas and sectors.”

Recent Government rhetoric on increased NMW enforcement is not visibly manifest in practice.

Alternative enforcement mechanisms should be examined. The Government may wish to consider an over-arching labour inspectorate and extending the scope of the GLA. At the very least, as recommended by MAC:

- Resourcing for enforcement activities needs to be enhanced.
- Incentives to encourage compliance need to be improved. There is little incentive for rogue employers to be compliant given the minimal chance of inspection and even smaller risk of prosecution.
- Organisational incentives among enforcement authorities would need to change,
- More collaborative working among enforcement agencies should be promoted.

### **3. National Minimum Wage and the Accommodation Offset**

For migrant workers coming to Britain their primary priorities are finding work and accommodation.

Under the accommodation offset arrangements, employers who provide accommodation to their workers can count up to a specified amount, £35.08 a week from October 2014 as payment towards the minimum wage.

It is impossible to commercially provide accommodation in other than a very few parts of the country within the accommodation offset maximum. A cursory examination of the to-let columns of local newspapers is sufficient to show this.

Historically, many labour providers offered a service to their workers to help them settle in the UK which included, in some cases, providing accommodation as an option. Labour providers generally would prefer not to provide accommodation but recognise that in some cases it is an added attraction for workers.

Almost all members of the ALP that did provide accommodation ceased to do so. Most labour providers now choose to do nothing, leaving workers to make their own arrangements.

Typically, some workers take it upon themselves to become mini-landlords, either buying or renting a large fairly run-down property and making rooms, or even beds, available to their fellow workers. Some of these, as reported by the media are operated by slavemasters. There are reported increases in “beds in sheds” and the government has funded action to tackle exploitative landlords in areas such as Wisbech and Boston.

The effect of the accommodation offset arrangement is that employers cannot legally provide accommodation to their own workers paid at or around NMW.

The only exceptions to this within the agriculture and food packing and processing industries are:

- growers providing accommodation where there is a direct benefit from the worker being on or close to site.
- growers or labour providers who have invested in purpose built hostel style accommodation with six to eight workers to a room.
- employers or labour providers who house multiple workers in caravans or mobile homes.

There is no incentive to provide more than the most basic type of accommodation.

The ALP proposes that the LPC recommends to government an approach that:

- Retains existing protection for workers with regard to tied accommodation;
- Provides fair protection for those workers who optionally choose to stay in accommodation provided by the employer;
- Provide workers with an additional option to source accommodation from their employer;
- Stimulates regeneration and growth by opening up incentives and opportunities for employers to enter the rental accommodation sector;
- Is fully auditable by HMRC, Local Authorities and others.

The ALP proposes that there is a two tier approach to Accommodation Offset rates.

- The existing Accommodation Offset rules should continue to apply if the accommodation is tied.
- A fairer system, based around market rates should apply where accommodation is optional

Accommodation should be considered tied if:

- the accommodation is provided in connection with the worker's contract of employment; or
- a worker's continued employment is dependent upon occupying particular accommodation; or
- a worker's occupation of accommodation is dependent upon remaining in a particular job

In both cases it is proposed that as an added protection for workers that the employer must provide a written tenancy or licence agreement which allows workers to cancel or withdraw from accommodation provided at any time without incurring any detriment or penalty, subject to the worker giving a maximum of 10 working days' notice (as currently contained in the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007 and the Gangmasters (Licensing Conditions) Rules 2009).

The ALP proposes that the LPC should hold a properly defined consultation seeking views on:

- The economic impact of the offset arrangements on suppressing the supply of accommodation
- Options for a fairer offset arrangement system that maintains protection for workers
- Access to remedy for workers
- Enforcement

ALP proposes that this consultation is scoped in 2014/15 for inclusion in the 2016 report.

#### **4. National Minimum Wage and Transport to Work Costs**

The ALP apologises for raising this matter again and understands that it is of marginal interest to the LPC.

It is however a matter of significance to all sectors where workers at or around NMW are offered transport to work.

The ALP 2012 and 2013 submissions to the LPC dealt with this matter in considerable detail and hence there is no need to repeat this here.

In summary, the current HMRC interpretation:

1. Is questionable at least.
2. Is perverse.
3. Causes labour providers and their workers to incur additional cost.
4. Makes it more difficult for the poorest workers to obtain work.
5. Puts the health and safety of workers at risk.

The ALP is keen to put this matter to bed.

The LPC is kindly requested to facilitate a meeting between the ALP and the appropriate individuals within BIS and HMRC to resolve this matter once and for all.