

# The Agricultural Wages Board in England and Wales

June 2013

## Introduction

The Agricultural Wages Board for England and Wales sets wage rates and a variety of employment terms and conditions for agricultural workers in England and Wales. This note provides an introduction to the functions of the Board, its history and the recent reviews of its functions.

## Powers of the Board

The Agricultural Wages Board (AWB) for England and Wales as presently constituted was established under the *Agricultural Wages Act 1948* (hereafter the 1948 Act).<sup>1</sup> The Board has the power to issue an Order covering a 12 month period within which it sets out minimum wages and terms and conditions for agricultural workers. The Order is published in October of each year.

Unlike the National Minimum Wage the Agricultural Wages Order sets out pay rates at six different grades. The grade at which an agricultural worker is paid is dependent on the levels of skills and qualifications of the worker. Minimum rates set by the AWB cannot be lower than the National Minimum Wage.

<sup>1</sup> *Agricultural Wages Act 1948* Chapter 47 11 and 12 Geo 6 [accessed 26 June 2013]

In addition to setting pay grades, the AWB's Order makes provisions in relation to other terms and conditions for agricultural workers including holiday pay, sick pay, overtime and piece work rates, apprenticeship rates, working dog allowance and bereavement allowance.

According to the 1948 Act the Board must publish its proposals for the Order and allow at least 14 days for representations to be made to the Board on the contents of its proposals. The Board must then meet to consider any representations made and decide whether to amend the Order or to adopt it as proposed.

## Membership of the Board

The Board consists of eight representatives nominated by the National Farmers Union (NFU), eight worker representatives nominated by the Unite trade union and up to five independent members appointed jointly by the Secretary of State and Welsh Ministers, including the Chair of the AWB.

## Enforcement of the Order

The 1948 Act allows for the appointment of officers in England and Wales to oversee enforcement of the AWB's Order. In Wales officers from the Rural Inspectorate Wales are responsible for investigating any complaints from workers. Inspection is only carried out in response to a specific complaint.

Where a claim of non-compliance is deemed valid then the Agricultural Wages Team (AWT) of the UK Department for Environment, Food and Rural Affairs (Defra) can take enforcement action on behalf of a worker if the employer does not take action to reimburse them.

## Workers covered by the Agricultural Wages Board

The 1948 Act states that any man, woman, boy or girl undertaking agricultural work is covered by the provisions of the AWB's Order.

Agriculture is defined as:

including dairy-farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds.

## History of the Board

The origins of an agricultural minimum wage in the UK can be traced back to the *Corn Production Act 1917*. Fears over food and labour shortages during World War One led the Government of the day to introduce an act setting out provisions to guarantee minimum prices for some agricultural products and minimum wages for agricultural workers. The provisions of the *Corn Production Act* were repealed in 1921 along with the requirements for a minimum wage. Following strikes over the declining living standards of farm workers an *Agricultural Wage (Regulation) Act* re-introduced the idea of statutory wage rates in 1924.

This Act gave the powers to county wage committees to set wage rates for their respective counties and gave a national board advisory functions only.

Disparities in wage levels and enforcement action across England and Wales led to calls for the national board to have functions to set a national minimum wage. In 1948 the UK Government introduced the *Agricultural Wages Act 1948* which established the AWB as currently constituted. That is, as a national board with the powers to set national minimum wage rates and other employment terms and conditions for agricultural workers.

## Recent reviews of the Board

Although a number of other wage committees were repealed in 1993 under the *Trade Union Reform and Employment Rights Act 1993*<sup>2</sup> the AWB was left outside of the Act. However a review of the statutory regime for minimum agriculture wages was completed. At that time the majority of respondents were in favour of retaining the functions of the AWB.

In 1999 the UK Ministry of Agriculture, Fisheries and Food and the Welsh Government's Agriculture Department carried out a review into *The future rationale for statutory wage and other controls in agriculture and horticulture*.<sup>3</sup> The review included consideration of the functions of both the AWB and Agricultural Wage Committees.

In July 2010, the then Secretary of State for Environment and Rural Affairs, Caroline Spellman announced that she would seek agreement with the Welsh Government to abolish the AWB.<sup>4</sup>

<sup>2</sup> *Trade Union Reform and Employment Rights Act 1993* Chapter 19 [accessed 26 June 2013]

<sup>3</sup> Ministry of Agriculture Fisheries and Food and National Assembly for Wales Agriculture Department, *Agricultural Pay and Conditions: The Future Rationale for Statutory Wage and Other Controls in Agriculture & Horticulture and the Operations of the Agricultural Wages Board and the Agricultural Wage Committees*, December 1999 (hard copy)

<sup>4</sup> Defra, Caroline Spellman, (Secretary of State for Environment, Food and Rural Affairs), *Defra's arms length bodies*, Written Statement 22 July 2010 [accessed 26 June 2013]

In October 2012 the UK Department for Environment, Food and Rural Affairs (Defra) issued a consultation on the future of the AWB in England and Wales.<sup>5</sup> In the consultation Defra asked for views on proposals to abolish the AWB and to bring agricultural workers within the provisions of National Minimum Wage and the Working Time Regulations. A summary of the consultation responses was published in December 2012 and Defra announced that it would proceed with the abolition of the AWB through the Enterprise and Regulatory Reform Bill.

On 29 January 2013 the Assembly voted against a Legislative Consent Motion that would have given the UK Parliament consent to consider the provisions of the Enterprise and Regulatory Reform Bill in relation to the abolition of the AWB for England and Wales.<sup>6</sup>

On 31 January 2013 the Environment and Sustainability Committee of the Assembly held an evidence gathering session on the future of the AWB in Wales.<sup>7</sup>

Consideration proceeded in the UK Parliament and the Bill received Royal Assent on 25 April 2013. Section 72 of the *Enterprise and Regulatory Reform Act 2013* abolishes the AWB for England and Wales.<sup>8</sup>

On 1 May 2013 the Welsh Government issued a consultation on the future of the Agricultural Wages Board, the Agricultural Wages Committee and the Agricultural Dwelling House Advisory Committee in Wales.<sup>9</sup> The consultation asked for stakeholder views

<sup>5</sup> Defra, *The future of the Agricultural Wages Board for England and Wales, Agricultural Wage Committee and Agricultural Dwelling House Advisory Committees England*, October 2012 [accessed 26 June 2013]

<sup>6</sup> National Assembly for Wales, *Plenary Agenda and Decisions ((109) v5)*, 29 January 2013 [accessed 26 June 2013]

<sup>7</sup> Written submissions to the evidence session and a record of proceedings can be found on the Environment and Sustainability Committee's webpage [here](#).

<sup>8</sup> *Enterprise and Regulatory Reform Act 2013* Chapter 24 [accessed 26 June 2013]

<sup>9</sup> Welsh Government, *The Future of the Agricultural Wages Board, the Agricultural Wages Committee and the Agricultural Dwelling House Advisory Committee in Wales*, May 2013 [accessed 26 June 2013]

on the future of the bodies in Wales and whether the Welsh Government should seek to maintain their functions by statutory or non-statutory means. The consultation closed on 26 June 2013.

The Welsh Government already has powers over the Agricultural Wages Committee and the Agricultural Dwelling House Advisory Committee in Wales.

## Impact Assessment

The Welsh Government did not publish an impact assessment on its consultation on the future of the AWB in Wales but an impact assessment was published by Defra on its 2012 consultation.<sup>10</sup>

**According to the June 2012 Survey of Agriculture and Horticulture in Wales there are 13,326 workers in Wales (about 11% of the England and Wales total) that could potentially be affected by the abolition of the Board. Of these 6,758 are casual workers.<sup>11</sup> The overall impact assessment is based on the number of agricultural workers in both England and Wales which the assessment states was 122,700 of which 42,405 were casual workers.**

The Best Estimate figures contained in the Defra impact assessment state that **on an England and Wales basis over a ten year period** agricultural workers would stand to lose £259 million:

- £149 million in wage payments;
- £4.4 million in sick pay; and
- £83.8 million in annual leave.

<sup>10</sup> Defra, *Abolition of the Agricultural Wages Board Impact Assessment*, 19 December 2012 [accessed 26 June 2012]

<sup>11</sup> Welsh Government Statistical Release, *Survey of Agriculture and Horticulture, June 2012*, November 2012 [accessed 26 June 2013]

## Legal effect of abolition on existing workers

Unless and until new terms are negotiated between the parties, agricultural workers' pay and conditions in Wales will remain at the level set out in the 2012 Order, even after it has expired on 1st October 2013. This is a matter of contract law and is also reinforced by savings provisions in the *Enterprise and Regulatory Reform Act 2013*.<sup>12</sup>

An attempt by an employer to force a change in contractual terms, to the disadvantage of the employee, would involve a breach of contract and could also lead to a claim for unfair or constructive dismissal. Similarly, ending existing contracts and replacing them with less favourable contracts could lead to claims for unfair dismissal, provided that the employees meet the minimum qualifying period of employment, which for workers before 6th April 2012 was 1 year, and thereafter is 2 years.

Employers will also need to be mindful of wider employment legislation and of the potential for discrimination claims should they pay different rates for the same work, without objective justification.

The greatest legal effect is therefore likely to be on new workers entering the sector, casual workers and those on short-term contracts. Defra's impact assessment on abolition of the AWB recognised this and it is Defra's view that all casual workers would no longer be subject to the provisions of the Order.

<sup>12</sup> *Enterprise and Regulatory Reform Act 2013* Chapter 24 [accessed 26 June 2013]

## The Agricultural Wages Order 2012

Full details of the wage rates and terms and conditions set out in the 2012 Agricultural Wages Order can be found on GOV.UK [here](#).

In 2012 the wage rate for Grade 1 agricultural workers (minimum wage) was £6.21 per hour, 2 pence more than the National Minimum Wage rate of £6.19 per hour. The rates for subsequent grades increases gradually to £9.40 for a Grade 6 worker.

The provisions of the Agricultural Wages Order apply to all workers of and above compulsory school age. For workers below compulsory school age i.e. those aged 16 or under the minimum wage rate is £3.11. All those over 16 would receive at least a Grade 1 wage. National Minimum Wage legislation only applies to those above compulsory school age and provides different rates for those aged 16 and 17, 18 to 20 and over 21.

The wage rate for apprentices also differs under the two regimes. Under the 2012 Order agricultural apprentices receive £3.57 in the first year of their apprenticeship. For apprentices in their second year this rises to £3.68 for aged 16 to 17 and £4.98 for those aged 18 to 20 and £6.21 for those aged 21 and over. In a third year of an apprenticeship all apprentices receive the Grade 1 wage. Under the National Minimum Wage apprentices receive £2.65 under the age of 19 or in the first year of their apprenticeship rising to £4.98 for those over the age of 19 in the second year of apprenticeship.

Agricultural workers working a normal working week receive 31 days annual leave whereas other workers are entitled to a minimum of 28 days. A maximum of 38 days is provided to agricultural workers working more than six days a week whereas no additional provision is made in legislation for other workers.

The Agricultural Wages Order includes specific rates for overtime whereas no specific provision is made for overtime under the National Minimum Wage.

## UK Government Position

In its 2012 consultation on the future of the AWB the UK Government states that the Board is derived from an era where the isolated and immobile nature of farm workers meant that they were in a relatively weak bargaining position which is no longer the case. The consultation document states:

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 UK 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.<sup>13</sup>

In response to a debate on the future of the AWB in the House of Commons on 16 October 2012 David Heath, UK Minister for State for Agriculture and Food stated that he did not believe that the AWB was within the Assembly's devolved competence:

It is clear that the matter is not a devolved one at the moment. The hon. Member for Ogmore looks askance—agriculture is devolved, but wage control is not. However, that does not stop us having a perfectly sensible dialogue with Welsh colleagues on the subject or stop them having a dialogue with the Wales Office on the constitutional issues.<sup>14</sup>

<sup>13</sup> Defra, *The Future of the Agricultural Wages Board for England and Wales, the Agricultural Wages Committee and the Agricultural Dwelling House Advisory Committee in England*, October 2012 [accessed 26 June 2012]

<sup>14</sup> *HC Deb 16 Oct 2012* C23WH [accessed 26 June 2013]

## Welsh Government Position

In its consultation on the future of AWB in Wales the Welsh Government states:

The UK Government's decision to abolish the AWB for England and Wales will result in Welsh agricultural workers coming under the NMW regulatory framework from October 2013. The NMW regime will only partially guarantee the protection currently offered to workers in the agricultural sector under the existing AMW regime. The Welsh Government may wish to maintain the functions of the AWB in Wales, either by legislative means or by establishing an advisory committee.<sup>15</sup>

In an oral statement to plenary on 30 April 2013 the Minister for Natural Resources and Food stated:

While this Government strongly disagrees with the UK Government's proposals to abolish the AWB in England and Wales, I nevertheless recognise and respect the Westminster Government's mandate to carry forward its policies for agriculture in England. In order to protect the agricultural sector in Wales, I have requested on a number of occasions that the UK Government's original plans to abolish the AWB under the Public Bodies Act 2011 should include provisions to transfer the functions of the AWB to Welsh Ministers. This would have provided a pragmatic solution enabling both Governments to pursue their different but wholly legitimate policy agendas.

I was disappointed in the extreme when subsequently the UK Government, rather than make use of the Public Bodies Act 2011, chose instead to use the Enterprise and Regulatory Reform Bill to bring forward provisions to abolish the Agricultural Wages Board for England and Wales. In my view, this was no more than a tactic to avoid the requirement for Assembly consent for the proposed action that would have been required in advance had the Public Bodies Act 2011 been used for the purpose. The Welsh Government was not informed of the move in advance, a move that demonstrated a clear lack of respect towards and circumvention of the devolution settlement.<sup>16</sup>

<sup>15</sup> Welsh Government, *The Future of the Agricultural Wages Board, the Agricultural Wages Committee and the Agricultural Dwelling House Advisory Committee in Wales*, May 2013 [accessed 26 June 2013]

<sup>16</sup> Welsh Government, Alun Davies (Minister for Natural Resources and Food), *Abolition of the Agricultural Wages Board Associated Statutory Bodies*, (Oral Statement), 30 April 2013, [accessed 26 June 2013]



## Further information

For further information on about the Agricultural Wages Board for England and Wales, please contact **Nia Seaton** ([Nia.Seaton@Wales.gov.uk](mailto:Nia.Seaton@Wales.gov.uk)), Research Service.

**See also:**

- Welsh Government Consultation on the **Future of the Agricultural Wages Board in Wales**.
- Defra Consultation page on the **Future of the Agricultural Wages Board**.

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