



Llywodraeth Cymru
Welsh Government

AGRICULTURAL SECTOR (WALES) BILL

Explanatory Memorandum
incorporating the Regulatory Impact
Assessment and Explanatory Notes

July 2013

Explanatory Memorandum to the Agricultural Sector (Wales) Bill

This Explanatory Memorandum has been prepared by the Department of Sustainable Futures of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Agricultural Sector (Wales) Bill, introduced by me on the 8 July 2013, would be within the legislative competence of the National Assembly for Wales.

Alun Davies AM

Minister for Natural Resources and Food
Assembly Member in charge of the Bill

8 July 2013

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Policy objectives of the Bill

Summary

1. The Bill preserves, in respect of agricultural workers in Wales, the statutory regulation of terms and conditions that currently exists by virtue of the Agricultural Wages Order 2012 ("The AWO 2012"), which was made by the Agricultural Wages Board ("the AWB"). Such preservation is necessary because the Enterprise and Regulatory Reform Act 2013 abolishes the AWB (with effect from 25/6/13) and revokes the AWO 2012 (with effect from 1/10/13). The Bill provides that, notwithstanding the revocation of the AWO 2012 in October 2013, the provisions within the Order, as regards terms and conditions, will continue to apply to agricultural workers in Wales from October onwards. The Bill further provides for an enforcement regime to underpin the continued operation of a distinct regulated regime for agricultural workers in Wales, such enforcement (with certain modifications) being consistent with the enforcement regime that hitherto operated in respect of the Orders made by the AWB. Enforcement under the Bill only applies to rights and duties arising after the Bill takes effect, otherwise it falls under the Agricultural Wages Act 1948 as preserved by the Enterprise and Regulatory Reform Act 2013 (Commencement No.1, Transitional Provisions and Savings) Order 2013. The Bill also provides the Welsh Ministers with the power to set up an Agricultural Advisory Panel for Wales that can be tasked by the Welsh Ministers with various duties in relation to the agricultural sector in Wales, including the provision of advice on various terms and conditions, for example training, allowances such as dog and housing offset and wages.

Background

2. The agricultural sector is distinct from other sectors by its structure and the type of physical work required. It is mostly comprised of small employment units and with additional seasonal and casual workers. A significant number of agricultural workers are non-permanent employees: around a third of all agricultural sector workers in England and Wales. Moreover, agricultural employees are required to work long hours and to perform highly physical and dangerous tasks.
3. The AWB was the last statutory private sector pay board to exist after the abolition of the Wages Councils in 1993. The main responsibilities of the AWB under the Agricultural Wages Act 1948 included setting the minimum rates of wage, holiday entitlement and other minimum terms and conditions of employment for agricultural workers in England and Wales. The Board covered around 140,000 general and craft agricultural workers in England and Wales.
4. The AWB, consisted of 5 independent members, 8 employer representatives (NFU) and 8 employee representatives (UNITE), and it met regularly to negotiate working conditions for the agricultural sector. The new agreed working conditions were then incorporated into the AWO, which took effect from 1

October every year. In the absence of this Bill the provisions of the AWO 2012 will remain in force in England and Wales until 1 October 2013.

Current arrangements

5. The system of bespoke statutory regulation for the engagement of agricultural workers acknowledges the distinctiveness of the sector and is consistent with rationale behind statutory interventions and free market modifications in respect of agricultural produce under the Common Agricultural Policy. Such intervention supports the effective functioning of agriculture by supporting different categories of workers, including flexible (casual) workers, young workers, apprentices and trainees, as key components and necessary factors of production. The bespoke regulated regime supports automatic career progression and personal and professional development through training provisions, and provides appropriate levels of holiday entitlement, sick pay, overtime pay, on call and night call premium relevant in this specific sector. It should be noted that the removal of the AWO 2012 by the UK Government would also remove the existing birth and adoption grants for agricultural workers, together with the housing allowance, dog allowance, and the entitlement for payment for travel time and training, which are again specific to the agricultural sector and its demands on those who work within it. The provisions listed above not only recognise the distinctiveness of the sector but help to attract new recruits, enabling workforce succession and the continuous effective functioning of the agricultural industry. The regulated, structured and consistent approach that is rendered possible by periodical orders setting sector specific and contextual terms and conditions, safeguarded a key factor in production without which the sector is at risk of not fully developing and realising its potential.
6. The statutory regime in England and Wales has provided 6 pay grades, depending on skills, qualifications, experience and level of responsibility. All of these grades are above the national minimum wage ("the NMW"). In addition, the current AWO 2012 guarantees training for certain workers (those at on the lowest weekly/hourly pay rate) to ensure career progression within the sector and outlines requirements for employers to cover the cost of specific training, and additional travel costs.
7. The Welsh Government believe that one of the most important aspects of the role of the AWB was to provide safeguards to career progression and skills development within the industry. The 6 pay grade system and career matrix together with provisions that allow grade 1 workers to enter grade 2 encouraged professional development and skills improvement, thus impacting positively on the whole sector. A structured and coherent approach to skills and progression are key components in realising the Welsh Government's aspirations to continue to develop a highly effective and efficient agricultural industry in Wales.
8. The AWB served the industry by providing a structure to reward skill and experience and maintain a balanced and well functioning sector in Wales. It recognised that the agricultural sector is different from other sectors and acknowledged the nature of seasonal work by having special provisions for

flexible workers and safeguarded the succession of skilled workers by specifying provisions for apprentices and trainees. One of the key benefits of having a distinct, bespoke statutory regime in place is to help farmers and farm workers to specify the terms and conditions of their employment and avoid potential disputes and the need for lengthy negotiations with individuals. The proposed Bill offers to maintain all the above provisions thus allowing the sector to continue to function without disruption to the statutory protection in existence at the present and without interruption to the entire agricultural supply chain of skilled workers.

Changes to the current arrangements

9. As part of the wider review of the structure of public bodies, the AWB for England and Wales has been abolished by virtue of the Enterprise and Regulatory Reform Act 2013 (“ERR”). It was abolished on 25 June 2013, together with associated statutory public bodies, the Agricultural Wages Committees (AWC) and Agricultural Dwelling Houses Advisory Committees (ADHAC) for England. The functions of the AWC and ADHAC are devolved in Wales and these bodies are thus to remain in Wales. The Welsh Government’s public consultation on the future of the AWB also sought the public’s view on the future of the supporting statutory bodies, the AWC and ADHAC in Wales. The full analysis of the consultation responses will inform the final policy decisions regarding the future of these bodies in Wales.
10. Removing the existing career structure will remove the mechanism for rewarding skills and experience in the agricultural sector together with the drive and opportunity for continuing professional development. Even though individual workers will be able to negotiate training requirements on their own behalf, it is difficult to foresee that such isolated discussions with employers would effectively replace the existing structure for skills. The existing career matrix ensures that experience and skills are retained and enhanced in the sector so the removal of this statutory provision is likely to have much wider implications for the industry, in particular, it can lead to increase in skills shortage and the increase of inexperienced (and thus less efficient) workforce. The absence of key skills and experience can be regarded as fundamental obstacle to the realisation of the Welsh Government aspirations for the sector going forward.
11. At present, there is public support for the retention of the AWB’s functions in Wales. The Farmers Union of Wales (FUW) has expressed concerns in relation to the plans to abolish the AWB. FUW considers the AWB to be the most effective body to determine the pay and conditions of service which reflect the unique requirements of the agricultural industry in Wales. *“The Farmers’ Union Wales believes that the Agricultural Wages Board’s role in setting minimum rates of pay and conditions allows for the unique labour requirements of the industry to be reflected in the terms and conditions.”*¹ Similarly, the union UNITE and the Young Farmers Club (YFC) expressed their support for retaining the functions of the AWB in Wales. Jonathan Williams, Rural Affairs Chairman at YFC expressed his concern about the impact the abolition of the AWB would

¹ Quoted from FUW’s response to Defra’s consultation on the abolition of the AWB.

have on the development of the whole sector: *“Without the Board, pay and conditions would be hit and cuts in wages would deter young people - the future - from entering the industry.”*²

Purpose and intended effect of the Bill

12. The intention of this Bill is to lay an important foundation for the realisation of the Welsh Government’s aspirations for the development of the agricultural sector in Wales. This will help to achieve high productivity and enhanced efficiency through well trained and motivated workers with access to a structured career path. The regime preserved by the Bill delivers something similar to that currently in place in Scotland and Northern Ireland where separate boards will continue to exist. This is essential to meet the future challenges that face agriculture, such as climate change, skills shortage and food security issues.
13. The Bill contains provisions that:
 - a. Preserve the current level of statutory protections prescribed in the 2012 AWO that would, without this Bill, cease to exist once the 2012 Order is revoked from 1 October 2013.
 - b. Provide the Welsh Ministers with the power to make future Orders prescribing agricultural terms and conditions.
 - c. Provide Welsh Ministers with the power to establish an Agricultural Advisory Panel for Wales to carry out similar but more modified functions of the AWB, including advising the Welsh Ministers on future Orders.
 - d. Enable the Agricultural Advisory Panel for Wales to carry out functions related to the operation of the agricultural sector, including promoting careers in agriculture and making recommendations to the Welsh Ministers to specify minimum terms and conditions.
 - e. Assist the foundation for a resilient, sustainable and well-trained agricultural sector in Wales.
 - f. Promote upskilling in the agricultural sector in correspondence with the overarching objectives of the “Working Smarter” agenda of the Welsh Government in delivering well-trained workers and professionally run farm businesses in Wales, contributing to a more prosperous and innovative economy.
14. The policy aim is not to replicate the existing AWB for England and Wales but to create a modern and effective mechanism for facilitating the Welsh Government’s aspirations for the sector. In order to realise this policy aim, a Wales-only body (such as the proposed Panel) could operate in a simplified manner and at a reduced cost, responding as and when the Welsh Government

² <http://www.welshcountry.co.uk/index.php/news-from-around-wales/42-other-news/12280-wales-yfc-mick-antoniw-am-and-the-agricultural-wages-board>

consider that its input is necessary, not just in relation to workers conditions but also as regards wider policy issues and how future orders and training prescriptions could be integrated into other areas of agricultural policy development. The proposed Panel may also explore the functioning of the boards in the other Administrations and use them as examples.

15. The Bill allows a level of flexibility regarding the composition and the remit of the Panel. This flexibility will ensure that the Panel could focus on the issues and problems that face the industry in Wales at present and in the future. The consultation has provided invaluable information about the concerns and goals individuals and organisations have in the agricultural sector.
16. Agriculture is facing a number of issues including the growing threat of climate change and food security which can only be combated by the existence of coherent and consistent policy-making that is fully in tune with all factors of production, including labour and the need for a proficient and resilient agricultural workforce. In the future, the industry will need to grow and increase production which will require a highly skilled operational workforce. The proposed Panel could support the agricultural sector addressing these challenges by considering how policy levers in respect of workers and the terms under which they are engaged, may be used to deliver wider industry benefits.
17. The Panel can also help addressing skills shortages the industry may be facing in the future. Data already reveals that, throughout the years, the level of regular and occasional workers (the two types of workers which come under the remit of the AWB) is not progressing, resulting in some shortage of skilled agricultural workers. If the downward trend continues, this will result in a decline in the availability of skills in the agricultural sector in Wales. It is envisaged that the proposed Panel will promote careers and skills development in the agricultural sector to tackle and prevent skills shortages in the industry.

Legislative competence

18. The National Assembly for Wales ('the Assembly') has the legislative competence to make provision in the Agricultural Sector (Wales) Bill under Part 4 of the Government of Wales Act 2006 ("GOWA 2006"). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.
19. Paragraph 1 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate under the heading of "*Agriculture, forestry, animals, plants and rural development*" and is reproduced below:

1 Agriculture, forestry, animals, plants and rural development

Agriculture. Horticulture. Forestry. Fisheries and fishing. Animal health and welfare. Plant health. Plant varieties and seeds. Rural development.

In this part of this Schedule "animals" means –

- (a) all mammals apart from humans, and
- (b) all animals other than mammals;

And related expressions are to be construed accordingly.

Exceptions –

Hunting with dogs.

Regulation of scientific or other experimental procedures on animals.

Import and export control, and regulation of movement, of animals, plants and other things, apart from (but subject to provision made by or by virtue of any Act of Parliament relating to the control of imports or exports)-

(a) the movement into and out of, and within, Wales of animals, animal products, plants, plant products and other things related to them for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and

(b) the movement into and out of, and within, Wales of animal feedstuff fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal or plant health or the environment.

Authorisations of veterinary medicines and medicinal products.

20. This gives the Assembly legislative competence to make the provisions of the Agricultural Sector (Wales) Bill. None of the provisions of the Bill fall within any of the exceptions specified in Part 1 of Schedule 7 to GOWA 2006, or apply otherwise than in relation to Wales, or confer, impose, modify or remove (or give power to confer, impose, modify or remove) functions exercisable other than in relation to Wales, or breach any restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions.

Options for achieving the policy objectives

21. Three different options have been considered to achieve the overarching policy objectives. The options are outlined below together with the benefits they offer and the disadvantages they present.

Option 1 – Do nothing

22. The AWB for England and Wales was abolished on 25 June 2013 and the Agricultural Wages (England and Wales) Order 2012 will be revoked from 1 October 2013. This means that agricultural workers in Wales will be subject to the NMW legislative framework from October 2013. The statutory protection under the NMW regime and other relevant employment legislation would only partially guarantee the protection currently offered to the agricultural sector under the current regime. The Low Pay Commission's report on the abolition of the AWB (2011) has considered the likely implications for agricultural workers and the wider industry in detail. The report concluded:

“Once abolished, many of the provisions of the Order will either be only partially covered by other statutory employment legislation, or not at all. Employment legislation does not make any provision for specific rates of pay linked to skills, specific rates of pay for overtime, a minimum rate of pay for workers of compulsory school age, rights to paid training, standby duty and night allowances, entitlement to paid bereavement leave, a birth or adoption grant, or a dog allowance.”³

23. The impact of these changes would not be felt immediately as the new regime would not affect pre existing contractual rights. The NMW system would provide the statutory safety net and the requirements would be the same in England and Wales. There would be a reduction of regulatory burden on businesses and employers.
24. However, statutory protection currently in existence in the agricultural sector in Wales would be reduced considerably. The current system differentiates between six grades of workers, linking pay rates to experience and qualifications. This will be lost once agricultural workers become part of the NMW regime. In addition, holiday entitlement and sick pay will be reduced as a result of the changes and overtime pay, on call and night call premium will cease to exist together with special allowances, such as the current level of housing allowance, dog allowance, and the entitlement for payment for travel time and training. The full impact of the removal of the AMW will not be known until the NMW regime has been implemented in the sector.

³ *The Implications for the National Minimum Wage of the Abolition of the Agricultural Wages Board in England and Wales* (Income Data Services, 2011)

Option 2: Legislate to preserve the existing statutory provisions in respect of agricultural workers

25. Preserving the current statutory provisions prescribed by the existing regime for agricultural workers in Wales by preserving, in effect, the provisions currently set out in the AWO 2012 beyond October 2013 but providing flexibility for the Welsh Ministers to make changes subsequently.
26. The current regime is used by both workers and farmers to avoid disputes and establish minimum terms and conditions relevant to specific employment and contracts. The system acknowledges the distinctiveness of the agriculture sector and provides special allowances and provisions only applicable for agriculture, including dog allowance, on-farm accommodation offset, bad weather provision and piece work. It acknowledges the nature of seasonal work which is prevailing in the sector by having special provisions for flexible workers. It also safeguards the succession of skilled workers by specifying provisions for apprentices and trainees. The AWO 2012 recognises 6 different categories of workers, based on vocational qualifications and relevant certificate of competence, aggregate period of experience in agriculture, including time spent in training, period of continuous employment and the level of responsibility given on the farm. All the grades are above the current NMW. Option 2 will provide a continuing foundation to support the functioning of agriculture in Wales beyond the abolition of the AWB and the revocation of the current AWO 2012.
27. By introducing the Agricultural Sector (Wales) Bill, the statutory requirements would differ in Wales to England which can present some difficulties for cross-border farms and may also impact negatively on competition between farm businesses in Wales when competing with businesses based in England.

Option 3: Create a non-statutory advisory system

28. Agricultural employers and workers in Wales could follow a non-statutory best practice guide in relation to wages and other terms and conditions of employment in the agricultural sector. This regime would help employers and employees to avoid disputes when arranging working contracts. This regime would not be enforceable by law and would rely on farmers and employers in the sector to adhere to the guidelines voluntarily. The NMW would, as with Option 1 and 2, act as the statutory safety net.
29. The development of a best practice guide could involve both industry representatives and government and provide regular and up-to-date advice to farmers on matters related to agriculture.
30. However, such guidelines would not be enforceable by law and would have to rely on the voluntary cooperation of farmers and employers in the agricultural sector.

Consultation

31. The Department for Environment, Food and Rural Affairs (Defra) conducted a short, 4 weeks consultation exercise in the autumn of 2012 before the abolition of the AWB was announced. 29 responses were received from Wales to this consultation: 26 were against the proposed abolition of the Board and only 3 were in favour.
32. A number of the respondents, including the Farmers Union of Wales (FUW) and the Royal Welsh Agricultural Society (RWAS) stated the means of settling wages and avoiding conflicts between farmers and employees as one of the key benefits of the AWB in Wales. The other benefits highlighted by the consultees included safeguarding general working conditions, agriculture related allowances (housing, on-call, dog allowance, etc.) encouraging young people to enter the industry, ensuring career progression and creating a resilient workforce for the future.
33. The Welsh Government launched a public consultation on the future of the AWB in Wales on 1 May 2013. Key stakeholders, including the Farming Unions, Unite, Lantra, agricultural colleges in Wales were directly contacted. The consultation exercise was open to the public and is available on the Welsh Government's website.
34. The consultation exercise was undertaken to seek the views of the Welsh public on the following 3 options:
 - a. Do nothing - if this option is followed there will be a permanent abolition of the AWB and the loss of orders setting minimum terms and conditions for agricultural workers in Wales from October 2013. Welsh agricultural workers would come under the NMW regime and/or any voluntary arrangements that employers might deploy.
 - b. Legislate to maintain the functions of the AWB in Wales - this option would involve establishing a Wales-only agricultural panel to assist with the determination of matters pertaining to agricultural workers and the broader agricultural sector in Wales.
 - c. Create a non statutory advisory board - this option would involve setting up an advisory board on a non-statutory basis to provide the advice similar to that previously given by the AWB. The advisory board would only be able to provide guidelines which would not be enforceable by law.
35. The consultation closed on 26 June 2013. In total, 23 consultation responses were received, from a range of stakeholders. Just over a third of the responses received were from individuals, and just over a quarter of responses came from Union Representatives. 86% of respondents preferred the option to legislate to

maintain the current statutory regime in Wales. A summary of the responses to the consultation is detailed in a separate document. Please follow the link below:

<http://wales.gov.uk/consultations/environmentandcountryside/future-of-agricultural-wages-board/?lang=en>

36. However, the responses from individuals, industry representatives, employees and other interested organisations have provided essential information about the needs and concerns of the functioning of agriculture in Wales and indicated support for the Welsh Government introducing legislation in this area. The level of flexibility that has been built into the Bill provisions will allow the responses to the consultation exercise to be taken into consideration when the future policy directions are developed. The policy intention remains to address the challenges facing agriculture in Wales and to modify the legislative framework in accordance with the needs of the industry. The provisions of the Bill will provide the basis for supporting the continuous functioning of agriculture and develop a coordinated system of enhancing essential skills and training in the sector.

Provisions of the Bill

37. The provisions of the Bill are set out in detail in Annex A, the Explanatory Notes to the Bill. This also includes a copy of the Agricultural Wages (England and Wales) Order 2012.

Costs

38. The provisions of the Bill generate a number of additional costs relative to the 'Do Nothing' option.
39. There would be a cost to Welsh Government associated with communicating the changes to stakeholders, this one-off cost is estimated to be approximately £5,000. There would be a further cost to Welsh Government associated with inspection/enforcement work. This work would involve a one-off training cost of approximately £2,500 and an annual cost of approximately £37,600 for a team of six inspectors. The costs to Welsh Government associated with the establishment of an advisory panel, providing a 'helpline service' and the required legal services are outlined in the RIA.
40. There would also be a potential cost to farm businesses relative to the 'Do Nothing' option from restricting flexibility in setting terms and conditions for agricultural workers. Where pre-existing contractual arrangements are not in place, farm businesses would (under the 'Do Nothing' option) have been able to negotiate terms and conditions including with reference to the NMW legislation. It has not been possible to quantify this cost in the time available.
41. A Regulatory Impact Assessment has been prepared (Annex B).

Power to make subordinate legislation

42. The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

- a. the person upon whom, or the body upon which, the power is conferred;
- b. the form in which the power is to be exercised;
- c. the appropriateness of the delegated power; and
- d. the applied procedure (affirmative, negative, no procedure), if any, together with the reasons why it is considered appropriate.

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
2(1)	Welsh Ministers	Order	Suitable for delegated power as provides appropriate flexibility to establish and subsequently modify the Agricultural Advisory Panel for Wales' functions without the need to amend primary legislation.	Affirmative	Powers involve considerations of special importance as the power allows a new public body to be created, and subsequently the functions to be modified.
2(3)	Welsh Ministers	Order	Delegated powers are appropriate to enable the Welsh Ministers to have oversight over the appointments/terms and conditions (particularly at times of financial constraints) of members of the Panel but also to have the agility to be able to adapt and implement any changes that might be necessary in relation to the constitution, general powers and functions of the panel.	Affirmative	Powers involve considerations of special importance as the principal substance of the legislative scheme will be set out in the order made in exercise of the power.
3(1)	Welsh Ministers	Order	The Agricultural Wages Orders may, amongst other things, prescribe the rate of remuneration and other terms and	Negative	Agricultural Wages Orders contain technical material and tend to be substantial documents. It is likely to be appropriate to update the subject matter of the

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			conditions of employment for workers in the agricultural sector. It is suitable for provision of this nature to be made by delegated powers to provide flexibility to modify these details without the need to amend primary legislation.		Order on a regular basis. The negative procedure therefore reflects the appropriate use of Assembly time. Under the current regime, orders are not statutory instruments and have no Parliamentary or Assembly procedure.
6(1)	Welsh Ministers	Regulations	Suitable to be the subject of Regulations to allow flexibility to modify details relating to the records and the form and manner of such records employers of agricultural workers will be required to keep without the need to amend primary legislation.	Affirmative	Powers to impose financial burden on employers. Failure to comply with regulations will be a criminal offence with a penalty, on conviction, of an unlimited fine. This represents a consideration of special importance.
11(1)(b)	Welsh Ministers	Order	Suitable to be the subject of an Order as it will end an Order that would be no longer required.	Negative	A technical power to bring to the end an existing Order, if the Welsh Ministers have not brought forward an order under section 3
13(1)	Welsh Ministers	Order	Suitable to be the subject of an Order as it provides for unforeseen circumstances to be addressed to facilitate the purpose of this Act (including making consequential amendments to other legislation if required).	Negative unless making changes to primary legislation where it is affirmative.	Negative: Enables the Welsh Ministers to ensure that the intentions of the Assembly in passing the Bill can be delivered. In that respect, the subject matter of such orders is unlikely to be controversial, the issues of principle having been agreed. Affirmative: Enables provision to be made which amends the text of primary legislation. This requires greater Assembly scrutiny.

ANNEX A - Explanatory Notes

1. These explanatory notes have been prepared by the Welsh Government to accompany the Agricultural Sector (Wales) Bill. They should be read in conjunction with the Bill. Where a section is self-explanatory, no comment has been provided.

Section 1 - Overview

2. This section sets out what the Act is doing. It highlights 3 key aspects:
 - the establishment of the Agricultural Advisory Panel for Wales to advise the Welsh Ministers on the agricultural sector in Wales,
 - the making of agricultural orders which set the terms and conditions for agricultural workers, and
 - the enforcement of the terms and conditions in those orders.
3. The commentary below explains each of these provisions in greater detail.

Section 2 - The Agricultural Advisory Panel for Wales

4. Under this section, the Welsh Ministers may establish a panel to be known as the Agricultural Advisory Panel for Wales (“the Panel”).
5. The Welsh Ministers are able to specify the functions of the Panel in the establishing order. Those functions must relate to the agricultural sector and may include:
 - promoting careers in agriculture,
 - advising the Welsh Ministers on agricultural orders setting terms and conditions for agricultural workers, and
 - advising the Welsh Ministers on other issues which may affect the sector.
6. This range of functions will enable the Welsh Ministers to task the Panel with considering many issues around the agricultural sector such as the recruitment and retention of workers into the sector and the how the sector can be encouraged and supported.
7. Before establishing the Panel, or making any changes to it once established, the Welsh Ministers must carry out appropriate consultation. This might include, for example, farming unions and other sector representatives, farmers and agricultural workers.

Section 3 - Agricultural orders

8. The section enables the Welsh Ministers to make agricultural orders setting minimum terms and conditions of employment of agricultural workers in Wales. However, before doing so, they must consult the persons or bodies that they think are likely to have an interest in the order. In practice this is likely to include farming unions and other sector representatives, farmers and agricultural workers themselves.
9. An agricultural order is an order which sets out the minimum terms and conditions of employment which must be offered to agricultural workers in Wales.

In particular, it can specify-

the wages that must be paid to agricultural workers (which can vary according to the worker's qualifications and experience),
the holiday entitlement that an agricultural worker must receive, and
other terms and conditions of employment that are relevant to the agricultural sector, such as for example, requiring that an allowance is paid to a shepherd who is required to keep working dogs as part of his or her job.

10. The rates of pay specified in an agricultural order must not be less than the NMW, set by the UK Government for all workers.

Section 4 - Enforcement of minimum rates

11. This section creates the enforcement regime for the provisions contained in agricultural orders which includes the minimum rates of pay which agricultural workers must receive. It does so primarily by applying (with some modifications) the regime set up by the National Minimum Wage Act 1998 (the 1998 Act") for enforcing compliance with the NMW.
12. There are several aspects to this enforcement regime.

Records

13. The application of sections 10 and 11 of the 1998 Act confer upon agricultural workers the right to inspect their employers' records to ensure that, among other things, they are being paid at least the minimum rate that applies to them by virtue of an agricultural order. The worker can only do so if the worker has reasonable grounds to suspect that he or she is not being paid the correct amount. The worker must follow the procedure set out in section 10 of the 1998 Act (as applied by the Bill) to be able to access the records.
14. Where an employer does not allow the worker access to the records, the worker may complain to an employment tribunal. If the employment tribunal finds the complaint well-founded, it must make a declaration to that effect and award the worker a financial sum.

Powers of officers

15. The application of section 14 of the 1998 Act confers powers on the officers appointed by the Welsh Ministers (see section 7 below) to ensure compliance with the enforcement regime. In particular, the officers have a range of investigative powers to require the production of information and records.
16. It is an offence (by virtue of the application of section 31(5) of the 1998 Act), for a person to delay or obstruct an officer from carrying out his or her duties. It is also an offence for a person to refuse to answer an officer's questions or to supply information that the officer is entitled to require the person to provide.

Entitlement to additional remuneration in the event of underpayment

17. The application of section 17 of the 1998 Act means that, where an agricultural worker is paid at a rate below the minimum rate which that the worker is entitled to receive by virtue of the Bill, then the worker becomes entitled to additional remuneration for the period which the worker was underpaid.
18. The additional remuneration to which the worker is entitled is calculated on a different basis from that in the 1998 Act by virtue of modifications in subsection (5) of the Bill. The worker is entitled to the higher of:
 - the difference between what the worker was paid and what the worker should have been paid, and
 - the amount worked out in accordance with the formula set out in the substituted subsection (4) of the Bill.

Notices of underpayment

19. The application of sections 19, 19C, 19D, 19F, 19G and 19H of the 1998 Act provide the mechanism for enforcement officers to serve notices on employers who, in the opinion of the officer, may have underpaid a worker or workers. The notice requires the employer to pay the sum due to the worker (calculated in accordance with section 17 as applied by the Bill) within 28 days of being served with a notice.
20. An employer who has been served with a notice of underpayment can appeal to an employment tribunal.
21. If a notice is not complied with (completely or otherwise), an officer can make a complaint on behalf of the worker to an employment rights tribunal.
22. Unlike the 1998 Act, the Bill does not provide for the imposition of financial penalties (over and above an additional remuneration due) on employers.

Right not to suffer detriment

23. The application of sections 23 and 24 of the 1998 Act confer a right on a worker not to suffer detriment by his employer for:

the worker enforcing rights under the Bill (or having such rights being enforced on the worker's behalf),
the worker's employer being prosecuted under this Bill, or
the worker being or becoming (or potentially being or becoming) entitled to be paid a minimum rate of remuneration in accordance with the Bill

24. Where an employer does subject the worker to detriment as a result of enforcing the worker's rights, the worker can make a complaint to an employment tribunal.

Offences

25. The application of sections 31 and 33 provide for the offences in relation to:

failure to pay to an agricultural worker the minimum rate to which that worker is entitled;
failure to keep and preserve the records that an employer is required to keep by virtue of regulations made under section 6 of the Bill;
making, having made or allowing to be made false entries in those records;
producing information or records which the person producing them knows to contain information which is false in a material particular;
delaying or obstructing officers in the carrying out of their duties or refusing to answer officers' questions or to provide officers with relevant information or records.

The penalty for these offences is an unlimited fine.

26. An enforcement officer may, if authorised by the Welsh Ministers, conduct the proceedings for an offence before a magistrate's court.

Restrictions on contracting out

27. The application of section 49 of the 1998 Act prevents agricultural workers and their employers from agreeing to a contract which would circumvent the minimum terms and conditions contained in an agricultural order.
28. This does not apply in relation to agreements entered into in relation to certain agreements prepared in order to resolve or avoid employment tribunal proceedings.

Unfair dismissal

29. Subsection (7) provides that an agricultural worker is to be regarded as having been unfairly dismissed if the reason (or the main reason) for the worker's dismissal relates to:
- the worker enforcing their rights under the Bill,
the worker's employer being prosecuted under this Bill, or
the worker being or becoming (or potentially being or becoming) entitled to be paid a minimum rate of remuneration in accordance with the Bill.

Section 5 - Enforcement of holiday entitlement

- 30. This section makes it an offence for an employer of an agricultural worker in Wales to fail to allow the worker to take the holidays specified in an agricultural order and specifies that the fine which is payable on conviction is level 3 on the standard scale (currently £4000).
- 31. It provides that in a prosecution for a failure to allow a worker to take holidays it is for the employer to prove that the worker was allowed to take his/her holidays.

Section 6 – Duty of employers to keep records

- 32. The Welsh Ministers may make regulations requiring employers of agricultural workers to keep specific records which are relevant to this Act.
- 33. For example, these records might include, wages slips, time sheets, contract of employment and information relating to the holiday leave.
- 34. If the Welsh Ministers do make regulations under this section, by virtue section 4 of this Act, it will be an offence for an employer not to keep the specific records, or to deliberately make (or allow to be made) false entries in the records. The penalty for this, if convicted, is an unlimited fine.

Section 7 - Appointment of officers

- 35. This section enables the Welsh Ministers to appoint enforcement officers to act in Wales.
- 36. In performing their duties officers must, if asked, produce appropriate identification proving that they are authorised to carry out such duties.
- 37. In addition, where officers are under the impression that any person they are talking to doesn't know that they are carrying out duties in relation to enforcing compliance with this legislation, the officers must explain that to the person.

Section 8 - Information obtained by officers

- 38. Under this section, information that has been obtained by officers for the purposes of the Act may be supplied to the Welsh Ministers (typically to enable them to bring prosecutions under the Act) or to the person to whom the information applies (so that civil proceedings may be brought in respect of the underpayment).
- 39. However, the Welsh Ministers may not supply information received under this section to any other person or body unless it is required for criminal or civil proceedings.

Section 9 - Meaning of “the national minimum wage”

- 40. This section provides the definition of the NMW for the purposes of this Bill.
- 41. In most cases this is the minimum single hourly rate as set by regulations made under section 1(3) of the 1998 Act.
- 42. However, in the circumstances set out in subsection (2) to (5) a different rate for the NMW may be deemed to apply.

Section 10 - Amendment of the Working Time Regulations

- 43. This provision makes consequential amendments to the Working Time Regulations 1998 to ensure that those regulations continue to apply to agricultural workers in Wales in the same manner as they currently do.

Section 11 - Transitional Provision

- 44. This section provides for the provisions of the Agricultural Wages (England and Wales) Order 2012 (as they were when that order was made on 20 July 2012) to have effect in relation to agricultural workers in Wales from 1st October 2013. Those provisions will cease to have effect when the Welsh Ministers make a new agricultural wages order under section 3 of the Bill or an order cancelling the provisions of the 2012 Wages Order.
- 45. For the purposes of enforcing the provisions of the 2012 Wages Order from 1st October 2013, it is deemed to be an order made under section 3 of the Bill. The rights and liabilities accrued prior to 1st October 2013 are to be enforced under the Agricultural Wages Act 1948: see article 4 of the Enterprise and Regulatory Reform (Commencement No. 1, Transitional Provisions and Savings) Order 2013 (SI 2013/1455).
- 46. If, at any point, the NMW exceeds any minimum rate of the 2012 Wages Order, the minimum rate in question is deemed to be the same as the NMW.
- 47. For ease of reference, a copy of the Agricultural Wages (England and Wales) Order 2012, made by the UK Government's Department for Environment, Food and Rural Affairs is hyperlinked to these Notes:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69593/awo12.pdf

Section 12 - Offences by bodies corporate

- 48. Under this section, where a body corporate (such as a company) has committed an offence under the Bill (whether under section 4 or 5), a director, manager or

secretary or similar officer of a body corporate (or a person purporting to hold such a position) may also be convicted and punished for the offence if they were involved with the commission of the offence, knew about it (and did nothing) or should reasonably have known about it.

Section 13 – Ancillary provision

- 49. This section enables the Welsh Ministers to make orders for the purposes of, or in connection with giving full effect to the Act.
- 50. This might be used, for example, to make consequential amendments to other legislation when the Agricultural Advisory Panel for Wales is established.

Section 14 – Orders and Regulations

- 51. This section provides that the powers of the Welsh Ministers to make orders and regulations are to be exercised by statutory instrument. When doing so, the Welsh Ministers can make other provision in order to give full effect to those orders or regulations (such as dealing with transitional matters).
- 52. Orders under section 2 and section 13 (where it modifies the text of an Act or Measure of the National Assembly for Wales or an Act of Parliament) are subject to the affirmative procedure as are regulations made under section 6.
- 53. Any other orders are subject to the negative procedure.

Section 15 - Interpretation

- 54. This section provides the meaning of key terms within the Act.
- 55. Of particular note here are the definitions of “agricultural worker” and “agriculture”.
- 56. An “agricultural worker” is a person employed in agriculture in Wales. An employer of such a person, even if based outside Wales, will be required to pay in accordance with the provisions of the Bill.
- 57. The definition of “agriculture” is broader than what might typically be seen as its ordinary meaning. As a result, while it encompasses cultivating soil for the growing crops and the rearing of animals to provide food, wool and other products, it also includes such activities as dairy farming, using land as osier land or as a market garden.

Section 16 - Commencement

- 58. The Bill will come into force on the day it receives Royal Assent.

ANNEX B – Regulatory Impact Assessment

1. This Regulatory Impact Assessment presents three different options in relation to the policy area covered by the Bill. Broad categories of costs and benefits have been identified for each option. However, in the time available it has not been possible to produce a fully quantified analysis of costs and benefits. In particular, it has not been possible to quantify the impact of the proposals on farm businesses in Wales. Detailed research looking at the structure of the industry, labour market conditions, prevailing wage rates and potential behavioural responses would be required to complete a quantified assessment. Given the uncertainty around these issues it is not possible to produce a best estimate of the costs on the farming industry at this time. However, this statement must be considered in the context of a Bill that merely seeks, at this juncture, to **preserve** a long standing and pre existing regulatory regime for agricultural workers.

OPTIONS

Option 1 - Do nothing

2. In this option, the current AWB for England and Wales (AWB) no longer exists nor will the AWO from 1st October 2012. However, the accrued rights of workers under contracts existing at the time of the expiry of the order will continue in force until such time as those contracts are re-negotiated. Accordingly, adjustments reflecting the demise of the AWB and its 2012 Order are expected to take place over a period of time where new workers enter the industry and existing contracts fall to be re-negotiated. Whilst the current statutory regime provides a safety net and a minimum level of remuneration, local labour market conditions and supply and demand will continue to influence specific terms and conditions for many workers.

Option 2 – Preserve the effect of the 2012 Order in relation to Wales and provide the Welsh Ministers with the opportunity to put in place suitable advisory arrangements and new Orders relating to the agricultural sector in Wales as may be required

3. Under this option the current level of statutory protections enjoyed by workers under the AWO 2012 will be preserved, as will (with necessary modifications), the current system of enforcement. There are good arguments that the preservation of an existing and known regulatory regime that already applies to all employers of agricultural workers in Wales, will not have significant adverse impact on farm businesses and that “business as usual” would be possible in the immediate to short term. Furthermore, the fact that many workers will have pre existing contractual rights to a level remuneration and certain terms and conditions would also signal a limited impact to employers in the short term. Against this background, the Bill provides the flexibility for the Welsh Ministers, by order to either revise the protections that it had hitherto preserved or disapply

the protections completely, if they considered that step to be necessary in order to secure the effective functioning of the sector. The Bill also provides the Welsh Ministers with the opportunity to establish a specialist panel to inform their decision making as regards how the sector may benefit from a system of regulated terms and conditions going forward.

Option 3 - Introduction of an Agricultural Advisory Panel for Wales on a non-statutory basis

4. This option would involve setting up an advisory board on a non-statutory basis to provide the advice in the areas that are currently subject to statutory regulation by the AWB. The advisory board would be able to provide advice immediately after the current AWB is abolished. However, the advisory board would only be able to provide guidelines and recommendations as to best practice whilst relying upon voluntary compliance by farm businesses.

COSTS

Option 1 - Do nothing

5. In this option, any adjustments to the terms and conditions of employment for farm workers would be expected to take place over a period of time reflecting labour demand and supply conditions and behavioural responses.
6. There will be no costs to the public sector associated with supporting the work of a board. This is the baseline option and is used to assess the costs and benefits of the other options.

Option 2 – Preserve the effect of the 2012 Order in relation to Wales and provide the Welsh Ministers with the opportunity to put in place suitable advisory arrangements and new Orders relating to the agricultural sector in Wales as may be required

7. It is submitted that the effect of this option is that there would be no immediate change for the agricultural sector in Wales, as it provides for the preservation of the effect of the current AWO 2012. Under this option, the Welsh Ministers have the power to decide whether the current order should be retained at all in the medium to longer term or whether a new order is required, and how the potential impact of such decisions are to be assessed.

Cost to Farm Businesses

8. There would be a potential cost to farm businesses relative to the 'Do Nothing' option from restricting flexibility in setting terms and conditions. Where pre-existing contractual arrangements are not in place or come to an end, farm businesses would (under the 'Do Nothing' option) have been able to negotiate terms and conditions in accordance with local labour market conditions (but subject, of course, to the statutory safety net provided by the National Minimum Wage Act 1998). Discussion on this is presented below.

Compliance costs

9. Beyond the short-term, the majority of the costs associated with this option are expected to reflect transfers from farm businesses to, new entrant agricultural workers, and those existing workers who are faced with having to re-negotiate their contracts. It is not anticipated that there will be any additional cost to those businesses which already employ workers with pre existing permanent contracts entered into prior to the 2012 Order being revoked. The net impact of these transfers on the UK economy is zero. These costs fall into the following broad categories:

Impact on the level of wages paid to farm workers;
Changes in the value of sick pay and annual leave entitlements;
Impact on the provision of accommodation.

10. Any **additional cost** to farm businesses will depend upon the number of new entrants and the number of existing workers whose contracts fall to be renegotiated as well as the structure of the farming industry in Wales, the difference between the rates and terms set out by the statutory regime in Wales and those that would be derived under non regulated local labour market conditions (as underpinned by the National Minimum Wage regime). For example, the demand for agricultural labour is likely to reflect wages, at least to some extent. Thus, wages set higher than otherwise could result in lower levels of employment, ameliorating the impact on farm costs. However, as indicated above, it is arguable that the impact in the immediate to short term will not be significant, as many existing employees will already have accrued rights and contracts based on the current system. The impact of this legislation will not affect these accrued rights, but may of course impact upon the cost of engaging new employees.
11. In so far as employment is lower than otherwise, this would reflect a real economic cost rather than a simple transfer. On the other hand, higher pay may in turn promote higher productivity (through, for example, incentivising investment in training), offsetting such costs. It should be noted in this context that the national minimum wage is set at the maximum level assessed to be feasible without adverse effects on employment. However, this reflects an average assessment across the UK economy as a whole – adverse employment effects are more (less) likely in less (more) profitable industries. There may therefore be grounds for expecting adverse employment effects, at least in some agricultural sectors.
12. Any changes to pay and other terms and conditions as a result of the proposals would also be expected to impact on the employment costs paid to government and others (for example, National Insurance Contributions). It will also affect tax receipts (which will be higher in so far as pay is higher, but lower in so far as there are adverse effects on employment levels). There are likely to be similar effects on benefit payments, but in the opposite direction.

13. In **the time available, it has not been possible to undertake a quantified analysis of the cost of the proposals to farm businesses.** Detailed research looking at the structure of the industry, labour market conditions and prevailing wage rates would be required to complete a quantified assessment. However, once again it should be emphasised that the immediate impact of the proposal is to simply preserve what is currently in place. A full Regulatory Impact Assessment will be undertaken prior to the publication of any new order.
14. The following paragraphs provide some discussion around the main issues.
15. The Survey of Agriculture and Horticulture identified approximately 58,000 agricultural workers in Wales in June 2012. The majority of these workers (over 75%) are principal farmers who draw an income from the profits of the business rather than being paid a salary.
16. The data shows approximately 13,000 workers who are employed on a regular (be that full-time or part-time) or a casual basis. However, while this is the best available estimate of the number of agricultural workers in Wales it may not reflect the total number of workers affected by the proposed legislation. On the one hand, this figure is likely to include a number of members of a farmer's family and other unpaid workers but at the same time the Survey only captures data for a single 'survey day' at the beginning of June and may not therefore capture all casual workers (in Wales a large amount of casual labour is taken on in the spring to help with lambing).
17. In addition to the number of agricultural workers employed, the cost to farm businesses will depend upon the structure of the statutory regime for those workers. Currently at the lower end of the scale, Grade 1 workers are paid £6.21 per hour under the terms of the current (2012) AWO, this is 2 pence per hour above the national minimum wage. The AWO provides greater protection and benefit to higher grade agricultural workers (and imposes a greater cost to farm businesses for these workers) reflecting experience and the level of training/skills gained.
18. The above assumes that, in the absence of the AWO, farm businesses would pay workers the national minimum wage. There are a number of reasons why this is unlikely to be the case, not least the supply and demand for workers and the mobility of labour.
19. The following table is taken from a report to the Low Pay Commission⁴ and suggests that over half of agricultural workers in England and Wales were paid a premium above the hourly rate set by the AWB in 2010. This suggests that the AWB rates have tended to be used as the basis for pay negotiations but that they are not directly applied. Where workers were paid below the AWB rate for their grade it is believed that they were Grade 1 workers paid the national minimum wage.

⁴ The implications for the National Minimum Wage of the abolition of the Agricultural Wages Board in England and Wales: A report for the Low Pay Commission, Incomes Data Services, December 2011.

Table 1. Workers paid above/below the AWB hourly rate for their grade in England and Wales

Type of worker	Below the rate	At the rate or 1p above	2p to 10p premium	More than 10p premium
Full time	28%	17%	6%	50%
Part time	30%	14%	2%	54%
Casual	26%	24%	12%	38%

Source: Earnings and Hours of Agricultural and Horticultural Workers (Defra).

20. The impact assessment undertaken by Defra⁵ suggests that the **abolition** of the AWB in England and Wales would result in redistribution from agricultural workers to farm businesses of between £0 (i.e. no redistribution) and £280 million. The broad range of costs presented reflects the inherent uncertainty in the analysis (particularly in relation to behavioural responses). This estimate will be dominated by the impact in England with the scale of any impact expected to be lower in Wales.

Administrative cost

21. In addition to the cost of compliance, there will be a cost to farm businesses for familiarising themselves with the provisions of the statutory regime in Wales, although in the immediate to short term, as existing provisions are being preserved, many of these provisions should already be familiar to employers. Farmers will need to be familiar with both the Welsh provisions and UK labour legislation (for example, in relation to the national minimum wage) to ensure that workers are being correctly remunerated. This is particularly true if the farmer employs workers on any diversified (non-agricultural) activities, the remuneration for which would be covered by UK legislation. This cost will be incurred each time a new order is published.
22. It is assumed that each employer would need 1 hour to familiarise themselves with the provisions that give effect to this proposal. Based on data from the Office for National Statistics' Annual Survey of Hours and Earnings, it is assumed that the cost per hour of a farmer's time is £11.89. Further analysis is required to determine the number of farm businesses that employ agricultural workers in Wales.

Cost to Welsh Government

Transition costs

23. There would be an additional cost to Welsh Government if Welsh Ministers introduced an Agricultural Advisory Panel in Wales. Although it must be noted that any such panel would not be a like for like replacement of the AWB and importantly it would not be the body making Agricultural Orders.

⁵ Reported in: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82649/awb-consult-final-ia-20121219.pdf

24. There would be a one-off cost to Welsh Government to inform stakeholders (for example farm businesses, farm workers and the farming unions) about the proposals. The estimated cost of this communications exercise is £5,000. In addition, there would be a one-off cost to train a team of inspectors; this cost is approximately £2,500. The total transition costs incurred by the Welsh Government are therefore £7,500.
25. Notwithstanding the comments in paragraph 25 and for illustrative purposes only it is noted that the current AWB does not employ staff directly with secretariat support being provided by Defra. The current budget for running the AWB for England and Wales is £179,000 per annum which is met from Defra's budget. This figure includes attendance costs, hospitality, T&S and provision for legal advice. In addition, there are printing costs associated with the Wages Order – this came to £24,601.60 for the 2009/10 financial year. Staff cost for the financial year 2009/10 came to £21,993.⁶
26. However, for reason set out above the running cost of a new Wales only based Advisory Panel is expected to be considerably lower as its functions (in particular the absence of a Order making function) would be different to that of the AWB. The policy aim is to simplify the way the Panel operates (relative to the AWB) and keep running costs at a necessary minimum. It would be possible to use the boards in Northern Ireland and Scotland as models for establishing a modernised, effective and low cost Agricultural Advisory Panel for Wales. Figures for staffing support have been made available by the Scottish Government which enable a rough estimate of real running cost expense.

Recurrent costs

27. As it has not been established how a possible Agricultural Advisory Panel for Wales would operate, it is not possible to provide exact figures related to the Panel itself and actual staff resources.
28. Based on the level of support required by the SAWB, the administration cost to Welsh Government of supporting a statutory Agricultural Advisory Panel in Wales and preparing, providing a 'helpline' service to farm businesses and agricultural workers and publishing new orders etc. is estimated to be approximately £58,000 per annum.
29. There would be a further annual cost to Welsh Government associated with inspection/enforcement work. Advice from Rural Inspectorate Wales suggests that a team of 6 inspectors (including a team leader) would be required to cover the whole of Wales. This team would cost approximately £37,600 per annum.

⁶ Data from *Report on Wages in Agriculture 1 January to 31 December 2010*; Defra and Welsh Government 2011

30. There will be a cost to the Welsh Government in terms additional legal support to prepare the necessary secondary legislation under the Bill and to provide advice as regards initiatives brought forward by any advisory board and any enforcement activity undertaken by appointed inspectors. The legal cost that arises in connection with the SAWB is £69,920, however, we would expect this to be proportionately smaller in Wales due to the relative size of the industry, we would therefore estimate this cost to be up to £50k per annum.
31. The costs associated with the Agricultural Advisory Panel for Wales itself is estimated to be approximately £25,000 per annum. This cost covers attendance costs, travel & subsistence and hospitality.

Table 2. Welsh Government costs in Option 2

	Number of staff	Proportion of time	Mid-point of pay-scale ⁽¹⁾ (£)	Cost (£)
<u>Transition costs</u>				
Communications				5,000
Training				2,500
Total Transition costs				7,500
<u>Recurrent costs</u>				
Administration				
Head of Branch	1	20%	62,610	12,520
HEO	1	60%	37,410	22,450
EO	1	60%	30,110	18,070
TS	1	20%	24,050	4,810
Inspection				
HEO	1	20%	37,410	7,480
EO	5	20%	30,110	30,110
Legal services				50,000
Total staff costs				145,440
Advisory Panel				25,000
Total Recurrent costs				170,440

(1) Includes 30% 'on costs'.

Wider costs

32. There are two potential wider costs related to the preservation of a regulated regime for minimum terms and conditions for agricultural workers in Wales.
33. As discussed above, economic theory suggests that setting a wage level for agricultural workers above the market clearing level would be expected to result in a reduction in **employment levels**. The Defra impact assessment on the

abolition of the AWB⁷ suggests that minimum wage levels set by the England and Wales AWB reduced employment in the industry by between 0.36 and 0.68%.

34. There is a risk that the existence of bespoke and distinct statutory regime for agricultural workers in Wales may have a negative impact on the **competitiveness** of Welsh producers because production costs may potentially be higher than those of competitors in England where such bespoke wages protections will cease to exist in October 2013.

Option 3 - Introduction of an Agricultural Advisory Panel for Wales on a non-statutory basis

Costs to farm businesses

35. As with Option 2, the majority of the costs associated with this option will be transfers from farming businesses to agricultural workers. However, since under this option the Agricultural Advisory Panel would be advising upon a voluntary scheme of wage rates and terms, farm businesses will be under no obligation to implement the Panel's recommendations. This could potentially reduce the cost to farm businesses (compared to Option 2) depending upon levels of compliance.
36. The discussion presented for Option 2 is also relevant here. **As with Option 2 it has not been possible to produce a quantified analysis of the costs of this option in the time available.**

Costs to Welsh Government

37. The one-off cost to Welsh Government associated with informing stakeholders about the new arrangements is assumed to be the same as under Option 2, approximately £5,000. This is the only transitional cost to Welsh Government under this option.
38. The cost to Welsh Government of supporting the Agricultural Advisory Panel, providing a 'helpline' service to farm businesses and agricultural workers and preparing and publishing new orders is assumed to be the same as Option 2 – approximately £58,000 per annum.
39. The cost of an agricultural advisory panel is assumed to be the same as Option 2, approximately £25,000 per annum.

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82649/awb-consult-final-ia-20121219.pdf

Table 3. Welsh Government costs in Option 3

	Number of staff	Proportion of time	Mid-point of pay-scale ⁽¹⁾ (£)	Cost (£)
<u>Transition costs</u>				
Communications				5,000
Total Transition costs				5,000
<u>Recurrent costs</u>				
Administration				
Head of Branch	1	20%	62,610	12,520
HEO	1	60%	37,410	22,450
EO	1	60%	30,110	18,070
TS	1	20%	24,050	4,810
Total staff costs				57,850
Advisory Panel				25,000
Total Recurrent costs				82,850

(1) Includes 30% 'on costs'.

BENEFITS

Option 1 – Do Nothing

40. Local labour market conditions underpinned by UK-wide legislative arrangements, such as the NMW, will determine the minimum wage for workers in the industry. Compared to the current situation (where the AWO applies), there would be potential benefits to farm businesses through lower administrative burdens (they would only need to be familiar with one set of legislative provisions) and the potential to pay lower wages to agricultural workers.

41. This option is used as the basis against which to compare the benefits of the other options.

Option 2 - Preserve the effect of the 2012 Order in relation to Wales and provide the Welsh Ministers with the opportunity to put in place suitable advisory arrangements and new Orders relating to the agricultural sector in Wales as may be required

42. As noted above, there are sound arguments that the preservation of the effect of the AWO 2012 for Wales presents no significant immediate or short term financial impacts on the agricultural sector in Wales. One of the benefits of this option is that the current terms and conditions for agricultural workers will be maintained, as well as the basis upon which future terms and conditions are determined. This can assist the effective functioning of the agricultural sector by

ensuring the existence of a well trained and skilled workforce which in turn can increase productivity and efficiency.

43. In turn this ensures there is no diminution of the current system which rewards skills and experience and thus maintains a balanced and well functioning sector in Wales. It allows the sector to function without disruption to the statutory protection and without interruption to the agricultural supply chain of skilled workforce.
44. Further it is expected to result in a transfer from farm businesses to agricultural workers, with the latter potentially benefitting from better general terms and conditions (for example in relation to sick leave and annual leave entitlements etc.) than would otherwise have been the case, however as indicated above, it is likely that many existing workers will continue to operate under rights accrued under contracts of employment entered into prior to changes to the statutory regime and therefore transfers referred to above are only likely to be seen as new workers enter the industry and existing contracts fall to be renewed or re-negotiated. The net impact on the UK economy associated with any transfers is zero.
45. The current AWO provides protection to younger workers by setting minimum terms and conditions for young workers of compulsory school age. This is in contrast to the NMW which only covers workers aged 16 and above. Similarly, UK Employment legislation does not make any provision for specific rates of pay linked to skills, specific rates of pay for overtime, a minimum rate of pay for workers of compulsory school age, rights to paid training, standby duty and night allowances, entitlement to paid bereavement leave, a birth or adoption grant, or a dog allowance.
46. The provision of minimum terms and conditions of employment for agricultural workers could potentially reduce the resource costs that would otherwise have been incurred by farm businesses and agricultural workers in negotiating terms and conditions on an individual basis.
47. The grading structure set out by the current AWB is said to provide an incentive to agricultural workers to undertake training and development in order to achieve a higher point on the scale. Encouraging additional training and development would be expected to benefit the farm business and the industry in general by raising productivity levels. The AWB also serves to encourage young workers to enter the industry by supporting automatic progression and personal development through training provisions.
48. It has been argued that workers in the agricultural industry tend to work longer hours and perform more physical and dangerous tasks than workers in other sectors of the economy and that it is therefore inappropriate that they should be subject to the same terms and conditions as other workers.
49. It should be noted, that other sectors of the economy operate effectively without a sector specific minimum terms and conditions regime. In these sectors, the interaction of labour supply and demand will result in employers paying a

premium to workers with a particular skill set or those engaged in hazardous activities or risk losing the worker to a competitor or alternative industry. There is some evidence of this happening in the agricultural industry, as shown in Table 1 (above) over 50% of agricultural workers were being paid a premium above the AWB rate for their grade in 2010.

50. **In the time available, it has not been possible to produce a quantified assessment of the benefits associated with the proposals.**

Option 3 – Introduction of an Agricultural Advisory Panel for Wales on a non-statutory basis

51. The extent to which the benefits discussed under Option 2 would be achieved by a non-statutory Agricultural Advisory Panel would depend upon the level of compliance by farm businesses.

ANNEX C - Specific Impact Assessments

1. A series of impact assessments on the effect of the Bill were conducted as part of this RIA. There were no differential impacts identified from the review of impact assessments or consultation responses.

Impact on the agricultural sector in Wales

2. It is estimated that because the Bill seeks to preserve the effect of the Agricultural Wages Board (AWB) and the Agriculture Wages Order (AWO) in the first instance that there will be no immediate changes and therefore very little immediate impact on the agricultural sector in Wales.
3. By introducing the Agricultural Sector (Wales) Bill, the statutory requirements would differ in Wales to England which can present some difficulties for cross-border farms and may also impact negatively on competition between farm businesses in Wales when competing with businesses based in England. From 1 October 2013, the AWO will be abolished in England. It is expected that this will lead to a decrease in wages for new agricultural workers in England. In the long term, this may mean that the agricultural sector in Wales is less competitive. This will have the biggest impact on the horticultural industry (horticultural holdings make up less than 1% of agricultural holdings in Wales) which is largely staffed by short term workers.
4. It is expected, however, that improved skill retention and career progression for workers in Wales will mitigate against this affect. The objective of the Bill is to provide benefits to the agricultural sector by supporting to address skills shortages and help new entrants into the industry.
5. Further impact assessments will be undertaken if and when the Welsh Government seek to make Orders under sections 2, 3 and 13 of the Act.

Impact on voluntary sector

6. There will be little or no impact on the voluntary sector from introducing this legislation.

Equality impact assessment

7. There is no evidence to indicate a differential impact on race, gender or disability with the introduction of this legislation.
8. The Welsh Government will continue to encourage the agricultural industry to take account of equality impact as part of their duties and responsibilities as employers.
9. The current AWO provides protection to younger workers by setting minimum terms and conditions for young workers of compulsory school age. The introduction of the Bill will ensure that this protection remains in Wales.

10. The Bill will not have a significant impact on disability.
11. To meet impacts on race equality, the delivery of the AWO will require consideration of a variety of languages as part of the delivery of the associated literature. For the enforcement of the AWO, where inspections need to be carried out in languages other than that of the inspecting officer, the inspector will need to make a provision in advance of the planned inspection.
12. The Human Rights Act 1998 has been considered as part of the equality assessment. The Bill is compatible with Convention Rights.
13. There is no evidence to indicate a differential impact for Gender and Gender Reassignment, Religion and Belief and Non-Belief, Sexual Orientation, Pregnancy and Maternity or Civil Partnerships.

Sustainable development impact

14. As part of the policy impact screening, consideration has been given to the five headline indicators in the Welsh Government's Sustainable Development Scheme. Two indicators were relevant being a Sustainable Economy and a Sustainable Society.
15. The policy objectives have been considered in terms of potential impact against the indicators for a sustainable economy and society. The guarantee of improved terms and conditions of employment in the sector will assist in maintaining the rural economy and communities.
16. The Bill is consistent with the Welsh Government's "Working Smarter" agenda and is expected to help deliver well trained workers and professionally run farm businesses in Wales to contribute to a more prosperous and innovative economy.
17. Supporting the agricultural sector in Wales by maintaining the comprehensive protection for workers and providing advice to Welsh Ministers on a sustainable agricultural industry is at the heart of the policy intent of this Bill.

Rural proofing checklist

18. The introduction of the Bill will see a small increase in work for the Rural Inspectorate for Wales for the first twelve months.
19. Currently there is public support for the retention of functions previously undertaken by the Agricultural Wages Board (AWB). The new Agricultural Advisory Panel will represent the interests of employers and workers but in doing so, deliver a modern and more flexible approach.

Impact on Welsh Language

20. There is no risk that the effects of this legislation will have a negative impact on the Welsh Language. Preserving the AWB and the Order and providing Welsh Ministers with the power to establish an Agricultural Advisory Panel to carry out similar but modified functions of the AWB will preserve and continue the Welsh Government's Welsh Language policies.

Impact on Children's Rights

21. The Minister for Natural Resources and Food has made the following statement:

"In my view development of the provisions of the Agricultural Sector (Wales) Bill has been undertaken with due regard to the United Nations Convention on the Rights of the Child, in accordance with the Rights of Children and Young Persons (Wales) Measure 2011".