

**National Assembly for Wales**  
Research paper

# Bill Summary: Agricultural Sector (Wales) Bill

July 2013

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



Research  
Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

The Research Service provides expert and impartial research and information to support Assembly Members and committees in fulfilling the scrutiny, legislative and representative functions of the National Assembly for Wales.

Research Service briefings are compiled for the benefit of Assembly Members and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our briefings; please post or email to the addresses below.

An electronic version of this paper can be found on the National Assembly website at: [www.assemblywales.org/research](http://www.assemblywales.org/research)

Further hard copies of this paper can be obtained from:

Research Service  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Email: [Research.Service@wales.gov.uk](mailto:Research.Service@wales.gov.uk)

Twitter: @NAWRResearch

© National Assembly for Wales Commission Copyright 2013

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Enquiry no: 13/1715

Paper number: 13 /049

**National Assembly for Wales**  
Research paper

## **Bill Summary: Agricultural Sector (Wales) Bill**

July 2013

Nia Seaton, Martin Jennings and Owain Roberts

This document provides a summary of the Welsh Government's Agricultural Sector (Wales) Bill 2013. It includes a summary of the policy background and the provisions of the Bill, considers potential financial impacts and sets out the key changes proposed to the current statutory agricultural wages regime.

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



Research  
Service



# Contents

<b>1. Introduction</b> .....	<b>1</b>
<b>2. Background</b> .....	<b>2</b>
2.1. The Agricultural Wages Board for England and Wales .....	2
2.2. Current membership .....	3
2.3. Enforcement and compliance.....	3
<b>3. Timeline</b> .....	<b>4</b>
3.1. Previous reviews.....	4
3.2. Defra consultation on the future of the AWB .....	4
3.3. The abolition of the AWB .....	5
3.4. Welsh Government consultation.....	6
3.5. Agricultural Wages Order 2012.....	7
3.6. Legal effect of abolition on existing workers.....	8
<b>4. The Bill</b> .....	<b>9</b>
4.1. Policy aims and objectives .....	9
4.2. Provisions .....	10
4.3. Implementation and review .....	11
<b>5. Financial implications and the Impact Assessment</b> .....	<b>12</b>
5.1. Option 1 .....	13
5.2. Option 2 .....	14
5.3. Option 3 .....	17
<b>6. Differences between the Bill and the Agricultural Wages Act 1948</b> .....	<b>18</b>
6.1. Power to set Wage Rates.....	18
6.2. Consultation .....	19



# Bill Summary: Agricultural Sector (Wales) Bill

## 1. Introduction

**Introduction date:** 8 July 2013

**Member in charge:** Alun Davies AM, Minister for Natural Resources and Food

**Stage 1 debate:** 9 July 2013

**Stage 2 proceedings (Committee of the Whole Assembly):** 16 July 2013

**Stage 3 and 4 proceedings:** 17 July 2013

The *Agricultural Sector (Wales) Bill* was introduced by the Minister for Natural Resources and Food, Alun Davies AM, on **8 July 2013**.

It is largely an enabling Bill that delegates a number of powers to Welsh Ministers to make subordinate legislation at a later date. In particular, it:

- provides Welsh Ministers with the power to make future **Agricultural Wages Orders**, a power previously vested in the Agricultural Wages Board for England and Wales.
- provides Welsh Ministers with a power to establish a new **Agricultural Advisory Panel for Wales** to carry out functions such as promoting careers in agriculture, advising the Welsh Ministers on the content of an Agricultural Wages Order and on any other matters relating to the agricultural sector; and
- enables the Agricultural Advisory Panel for Wales to carry out functions, to be specified by Welsh Ministers, relating 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.

According to the accompanying Explanatory Memorandum, the aim of the Bill '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'.<sup>1</sup>

Following a vote on a motion on 2 July, the Assembly has agreed for the Bill to be treated as an **Emergency Bill**, which involves a much curtailed legislative process.<sup>2</sup>

---

<sup>1</sup> Welsh Government, *Agricultural Sector (Wales) Bill, Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes*, July 2013, paragraph 15

<sup>2</sup> Further information about Emergency Bills can be found in the Research Service [Quick Guide: Emergency Bills](#)

## 2. Background

### 2.1. *The Agricultural Wages Board for England and Wales*

The Agricultural Wages Board ('AWB') for England and Wales was established under the *Agricultural Wages Act 1948* ('the 1948 Act').<sup>3</sup> The purpose of AWB was to provide an independent forum for agricultural wage negotiations between employers and employees without Ministerial involvement.

The 1948 Act provides the AWB with the power to issue an Order ('an Agricultural Wages Order') which sets out minimum wages and terms and conditions for agricultural workers in England and Wales. The Agricultural Wages 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, which can only be set by the UK Government.

In addition to setting pay grades, the Agricultural Wages Order can also make 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.

The 1948 Act required the AWB to publish its proposals for an Agricultural Wages Order in draft and allow at least 14 days for representation to be made to the AWB on the contents of its proposals. The AWB was then required to consider any representations made and decide whether to amend the Agricultural Wages Order or to adopt it as proposed.

---

<sup>3</sup> [\*Agricultural Wages Act 1948\*](#) (Chapter47)



The 1948 Act stated that any man, woman, boy or girl undertaking agricultural work was covered by the provisions of the Agricultural Wages Order. Agriculture is defined in the Act 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.<sup>4</sup>

## *2.2. Current membership*

Prior to its abolition, the 1948 Act required the AWB to consist 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.

## *2.3. Enforcement and compliance*

The 1948 Act allowed for the AWB to appoint officers in England and Wales to oversee enforcement of the Agricultural Wages Order. In Wales, officers from the Rural Inspectorate Wales were responsible for investigating any complaints from workers. Inspection was only carried out in response to a specific complaint.

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

---

<sup>4</sup> Ibid, Section 17

### 3. Timeline

#### 3.1. Previous reviews

Although a number of other wage committees were repealed in 1993 under the *Trade Union Reform and Employment Rights Act 1993*,<sup>5</sup> the AWB was left outside its scope. However a review of the statutory regime for minimum agriculture wages was completed at the time, with a majority of respondents in favour of retaining the functions of the AWB.

In 1999 the UK Ministry of Agriculture, Fisheries and Food and the then National Assembly for Wales' Agriculture Department carried out a review into *the future rationale for statutory wage and other controls in agriculture and horticulture*.<sup>6</sup> The review included consideration of the functions of both the AWB and Agricultural Wage Committees.

#### 3.2. Defra consultation on the future of the AWB

In July 2010, the then Secretary of State for Environment and Rural Affairs, the Rt. Hon Caroline Spelman MP, announced that she would seek agreement with the Welsh Government to abolish the AWB.<sup>7</sup>

This was followed in October 2012 by a consultation on the future of the AWB in England and Wales which was published by Defra.<sup>8</sup> The consultation document stated that the AWB 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. It concluded as a result that:

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** [RS emphasis].<sup>9</sup>

---

<sup>5</sup> *Trade Union Reform and Employment Rights Act 1993* Chapter 19 [accessed 26 June 2013]

<sup>6</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>7</sup> Defra, Caroline Spelman, (Secretary of State for Environment, Food and Rural Affairs), *Defra's arms length bodies*, Written Statement 22 July 2010 [accessed 26 June 2013]

<sup>8</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>9</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

In the consultation, Defra also 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.

### *3.3. The abolition of the AWB*

Following the consultation, Defra announced in **December 2012** that it would proceed with the abolition of the AWB through the *Enterprise and Regulatory Reform Bill*, which was going through the UK Parliament at the time. To this end, amendments aimed at abolishing the AWB were tabled by the UK Government in **January 2013** and eventually agreed during Report Stage in the House of Lords.

Shortly afterwards, on **11 January 2013**, the Welsh Government tabled a Legislative Consent Motion in the Assembly on the provisions in the Bill relating to the abolition of the AWB, despite the opinion of the UK Government that they related to non-devolved areas. The UK Government's position on the issue was set out by the Minister for Agriculture and Food, the Rt. Hon David Heath MP, who told the House of Commons on 16 October 2012 that:

It is clear that the **matter is not a devolved one at the moment ... agriculture is devolved, but wage control is not** [RS emphasis]. 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>10</sup>

**The Assembly voted against the Legislative Consent Motion in plenary on 29 January 2013 and, in doing so, refused its permission for the UK Parliament to legislate on its behalf to abolish the AWB's functions in Wales.**<sup>11</sup> However, as the UK Government were not of the opinion that the provisions relating to the abolition of the AWB were within the Assembly's powers, the Assembly's wishes were effectively ignored and the Bill received Royal Assent and became law on **25 April 2013**.<sup>12</sup>

An evidence gathering session on the future of the AWB in Wales was conducted by the Assembly's Environment and Sustainability Committee on **31 January 2013**.<sup>13</sup>

---

<sup>10</sup> [HC Deb 16 Oct 2012](#) C23WH

<sup>11</sup> National Assembly for Wales, [Plenary Agenda and Decisions \(\(109\) v5\)](#), 29 January 2013

<sup>12</sup> [Enterprise and Regulatory Reform Act 2013](#) Chapter 24

<sup>13</sup> Written submissions to the evidence session and a record of proceedings can be found on the Environment and Sustainability Committee's webpage [here](#).

### 3.4. *Welsh Government consultation*

In an oral statement to plenary on **30 April 2013** the Minister for Natural Resources and Food, Alun Davies AM, stated that:

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>14</sup>

The Minister's statement was followed on **1 May 2013** by the issuing of a Welsh Government consultation on the future of the Agricultural Wages Board, the Agricultural Wages Committee and the Agricultural Dwelling House Advisory Committee in Wales.<sup>15</sup> The consultation asked for stakeholder views 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. In relation to the decision to the UK Government's decision to abolish the AWB, the document stated that:

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>16</sup>

The consultation closed on **26 June 2013**.

---

<sup>14</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

<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

<sup>16</sup> Ibid

### 3.5. *Agricultural Wages Order 2012*

The most recent Agricultural Wages Order made by the AWB is the [\*Agricultural Wages \(England and Wales\) Order 2012\*](#) ('the 2012 Order') which came into force on **1 October 2012**.

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

The provisions of the 2012 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 agricultural wages and minimum wages 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.

The 2012 Order also states that agricultural workers working a normal working week will 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 2012 Order includes specific rates for overtime whereas no specific provision is made for overtime under the National Minimum Wage.

### 3.6. *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>17</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, within 12 months of abolition, all casual workers would no longer be subject to the provisions of the Order.**

---

<sup>17</sup> [Enterprise and Regulatory Reform Act 2013](#) Chapter 24 [accessed 26 June 2013]

## 4. The Bill

### 4.1. Policy aims and objectives

According to the EM, the Bill aims to preserve the current levels of statutory protection prescribed in the [Agricultural Wages \(England and Wales\) Order 2012](#) ('the 2012 Order') which would, without this Bill, cease to exist from **1 October 2013**. The EM's Regulatory Impact Assessment recognises however that the accrued rights of workers under contracts existing at the time of expiry of the Order will continue in force until such time as those contracts are re-negotiated.

The Bill temporarily retains the levels of statutory protection prescribed in the 2012 Order until such time as Welsh Ministers issue a new Order under Section 3 of the Bill. In addition, the Bill delegates powers to Welsh Ministers to set a new agricultural wages regime for Wales, if they so choose. In particular, it:

- provides Welsh Ministers with the power to make future Agricultural Wages Orders – a power previously vested in the AWB.
- provides Welsh Ministers with a power to establish a new Agricultural Advisory Panel for Wales to carry out functions such as promoting careers in agriculture, advising the Welsh Ministers on the content of an Agricultural Wages Order and on any matters relating to the agricultural sector; and
- enables 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. These functions are significantly wider than those previously vested in the AWB by the 1948 Act.

The EM also states that the Bill has a long term aim to 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.

The EM states that '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'.<sup>18</sup>

---

<sup>18</sup> Welsh Government, *Agricultural Sector (Wales) Bill, Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes*, July 2013, paragraph 15

## 4.2. Provisions

**The Bill is mainly a framework Bill which delegates powers for Welsh Ministers to make subordinate legislation at a later date. It contains 17 Sections and no Schedules.** These are summarised below.

**Section 1 (Overview)** provides a brief overview of the Bill, and is not intended to have any legal effect.

**Section 2 (The Agricultural Advisory Panel for Wales)** empowers Welsh Ministers to establish, appoint members to and specify the functions of an Agricultural Advisory Panel for Wales, by order subject to the **affirmative procedure**. Before establishing and appointing the panel, the Section requires Welsh Ministers to undertake consultation with persons Welsh Ministers consider appropriate.

**Section 3 (Agricultural orders)** empowers Welsh Ministers to make agricultural orders setting minimum terms and conditions of employment of agricultural workers in Wales. In particular, it may 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.

Such orders will be subject to the **negative procedure**.

**Section 4 (Enforcement of minimum rates)** 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* for enforcing compliance with the national minimum wage.

**Section 5 (Enforcement of holiday entitlement)** 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).

**Section 6 (Duty of employers to keep records)** empowers Welsh Ministers to make regulations to impose record-keeping requirements on employers. Such regulations would be subject to the **affirmative procedure**.

**Section 7 (Appointment of officers)** empowers Welsh Ministers to appoint officers to enforce the Act in Wales. **Section 8 (Information obtained by officers)** makes provision to protect the privacy of information obtained by those officers.



**Section 9 (Meaning of ‘the National Minimum Wages’)** contains a definition of the ‘national minimum wage’ by reference to the *National Minimum Wage Act 1998*.

**Section 10 (Amendment to the Working Time Regulations)** amends the definition of a ‘worker employed in agriculture’ in the *Working Time Regulations 1998*.

**Section 11 (Transitional provisions)** provides for the provisions of the Agricultural Wages (England and Wales) Order 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 Order. An order cancelling the provisions of the 2012 Order will be subject to the **negative procedure**.

**Section 12 (Offences by bodies corporate)** provides that where a body corporate has committed an offence 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)** empowers Welsh Ministers to make orders for the purposes of, or in connection with, giving full effect to the Act. Such orders will be subject to the **negative procedure** unless they make changes to primary legislation where they will be subject to the **affirmative procedure**.

**Section 14 (Orders and regulations)** provides that the powers of the Welsh Ministers to make orders and regulations are to be exercised by statutory instrument.

**Section 15 (Interpretation)** provides the meaning of key terms in the Act, including definitions of ‘agriculture’ and ‘agricultural worker’.

**Section 16 (Commencement)** provides that the Bill will come into force on the day it received Royal Assent.

**Section 17 (Short title)** provides that the short title of the Bill, once passed, will be the *Agricultural Sector (Wales) Act 2013*.

#### *4.3. Implementation and review*

**The Explanatory Memorandum provides no details of when the Welsh Ministers will bring forward subordinate legislation to implement the Bill.**

## 5. Financial implications and the Impact Assessment

Annex B of the Explanatory Memorandum includes a Regulatory Impact Assessment. The Assessment includes three options:

- **Option 1:** The Do Nothing option where the Board is abolished and no replacement provisions are made in Wales.
- **Option 2:** The Bill option where Welsh Ministers would be provided with the power to set wage rates and if it chooses to establish and Advisory Panel for Agriculture. Under this option the provisions of the 2012 Order would be maintained until such a time as Welsh Ministers introduced a new Order.
- **Option 3:** The introduction of an Agricultural Advisory Panel for Wales on a non-statutory basis.

A summary of the costs and benefits identified by the Welsh Government for each option is provided below. However it is important to note that the Impact Assessment states that **it has not been possible in the time available to produce a quantified assessment of the benefits and costs to farm businesses of the different options. The Impact Assessment does not therefore reach a conclusion.**

The Explanatory Memorandum states that detailed research to look at the structure of the industry, labour market conditions, prevailing wage rates and potential behavioural responses would be needed to complete a quantified assessment. It states that the uncertainty around these issues means it is not possible to produce a best estimate of costs to farmers at this time.

Annex C of the Explanatory Memorandum states that further impact assessments will be undertaken 'if and when the Welsh Government seek to make Orders under Section 2, 3 and 13 of the Act'.

## 5.1. Option 1

Option 1, the 'Do Nothing' option, would mean that there would be no replacement Board established in Wales and that employers and employees in the agricultural sector who do not have accrued rights under existing contracts would operate within national minimum wage legislation and working time regulations from 1 October 2013.

Essentially the cost and benefits of this option were estimated by Defra in the impact assessment which accompanied its consultation on the abolition of the Board in October 2012. However, it is important to **note that the figures included in the impact assessment do not disaggregate the figures for Wales.**

The Defra 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. 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>19</sup>

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.

If around 10% of the workers affected by the abolition are in Wales, simply applying this proportion to the Defra estimate would suggest agricultural workers in Wales could stand to lose somewhere between £20 million to £30 million over a ten year period.

Those farm workers with pre-existing contracts would retain their contractual rights until such time as their contracts were due for re-negotiation.

The Welsh Government states that there would be benefits to farmers through lower administrative burdens and the potential to pay lower wages. These benefits aren't quantified. The Welsh Government would make savings from not having to fund the work of a Board.

---

<sup>19</sup> Welsh Government Statistical Release, [Survey of Agriculture and Horticulture, June 2012](#), November 2012 [accessed 26 June 2013]

## 5.2. *Option 2*

Option 2 sets out the impacts and financial implications of the proposals contained within the Bill.

### *Costs and Benefits to Farmers*

As stated in the previous section the Impact Assessment does not quantify costs and benefits to farmers but a narrative description of potential costs and benefits is provided. Any additional costs to farm business will depend upon the number of new entrants and existing workers whose contracts are due to be re-negotiated. Exact costs will depend on the wage levels and other terms and conditions set by Welsh Ministers as compared to the levels farmers would have been required to pay under the national minimum wage and working time regulations. Without knowing the wage rates and other terms and conditions that would be set it is not possible to estimate what the additional costs would be to farmers. Additional costs to farmers could be offset by higher productivity from farm workers. This possibility has not been expanded upon or quantified.

Annex C of the Explanatory Memorandum on specific impact assessments states that the introduction of different statutory requirements in England and Wales could present some difficulties for cross-border farms. The Impact Assessment does not set out in detail what these difficulties may be or what the potential costs might be for farm businesses. Paragraph 22 of the Explanatory Memorandum states that the administrative cost to farm business of having to understand this new legislation is likely to be £11.89 which is equivalent to one hours work for a farm employer. The Impact Assessment does not state why the figure of one hour was chosen or whether more time would be required in farm businesses operating under two different regimes. In addition, the Impact Assessment states further analysis is required to determine the number of farm businesses that employ agricultural workers so that a total administrative cost can be calculated.

Annex C states that there may be a negative impact on the competitiveness of Welsh farm businesses as compared to businesses based in England. The decrease in wages that may result from the abolition of the Board in England could make English farm businesses more competitive in the long term. This possibility has not been expanded upon or quantified.

## *Costs and benefits to the Welsh Government*

The Impact Assessment identifies a number of different costs to the Welsh Government, summarised below:

**Table - Summary of costs compared of options set out in the EM compared to Option 1 status quo**

	<u>Option 2</u>	<u>Option 3</u>
<b>Transitional costs</b>		
<i>Welsh Government</i>		
Inform stakeholders	£5,000	£5,000
Train inspectors	£2,500	NA
<b>Total - Welsh Government</b>	<b>£7,500</b>	<b>£5,000</b>
 <i>Businesses &amp; farm workers</i>		
It has not been possible to undertake a quantified analysis of the cost of the proposals to farm businesses		
<b>Total transitional costs</b>	<b>Not known</b>	<b>Not known</b>
 <b>Annual costs</b>		
<i>Welsh Government - staff</i>		
Inspectors	£37,590	NA
Supporting advisory panel	£57,850	£57,850
Legal services	£50,000	NA
<b>Total - Welsh Government staff</b>	<b>£145,450</b>	<b>£57,850</b>
Agricultural advisory panel	£25,000	£25,000
<b>Total - Welsh Government</b>	<b>£170,440</b>	<b>£82,850</b>
 <i>Businesses &amp; farm workers</i>		
It has not been possible to undertake a quantified analysis of the cost of the proposals to farm businesses		
<b>Total annual costs</b>	<b>Not known</b>	<b>Not known</b>

Note: The EM states that 'it has not been possible to undertake a detailed assessment of costs and benefits in the time available'. Costs to businesses and farm workers will be dependent on Orders made by the Welsh Government for which Regulatory Impact Assessments will be provided.

The EM estimates that administration costs for businesses would be £11.89 per employer, further analysis is required to determine the number of farm businesses that employ agricultural workers and how often these administration costs would occur. Therefore neither transitional nor on-going costs have been included in the table above.

NA - not applicable to this option.

The Assessment identifies a number of ‘one-off’ costs and a number of on-going costs. The ‘one-off’ costs include £5,000 for a communication exercise to advertise the changes to farm businesses and workers and £2,500 to train inspectors to enforce the new regulatory regime.

The on-going costs include:

- £37,600 per annum for a team of six inspectors, 1.2 FTE staff;
- £58,000 per annum in staff costs to support the work of an Agricultural Advisory Panel if created, preparation of Orders and staffing a helpline service for farm businesses and agricultural workers, 1.6 FTE staff;
- £50,000 per annum in additional costs to the Legal Services team in Welsh Government in drafting secondary legislation and ad hoc legal queries; and
- £25,000 per annum in attendance costs, travel and subsistence and hospitality costs for an Agricultural Advisory Panel if established.

The Impact Assessment states that ‘it is not possible to provide exact figures related to the Panel itself and actual staff resources’ and it is not clear on how many Panel Members the £25,000 figure was based. Welsh Ministers will be provided with the powers to set out via an Order under Section 2 how many Members will set on the proposed Panel. On-going staff costs have been identified on the basis of the amount it costs the Scottish Government to run the Scottish Agricultural Wages Board. The Impact Assessment does not set out why the Scottish model has been chosen as a comparator and how the Welsh model may differ from this.

The Impact Assessment does not appear to identify what the on-going communication costs to the Welsh Government would be of publishing new Orders and notifying farm businesses and workers of any changes beyond what it would cost in staff time.

## *Wider Costs and Benefits*

The Impact Assessment identifies a number of wider costs and benefits including the costs and benefits to agricultural workers. Benefits identified for workers include the maintenance of existing wage rates and terms and conditions. Specific benefits are identified for young workers of a compulsory school age as current Orders set by the Board include higher wage rates for these workers. A grading structure could provide an incentive for workers to undertake training and development. These benefits are not quantified and the assessment states that it should be noted that 'other sectors of the economy operate effectively without sector specific minimum terms and conditions'. Table 1 of the Impact Assessment demonstrates that there is some evidence of this happening in the agricultural industry.

In terms of wider costs, economic theory suggests that setting a wage level above the market clearing level could result in a reduction in employment levels. The Defra impact assessment sets out that the previous Board for England and Wales reduced employment in the industry by between 0.36 and 0.68 per cent.

### *5.3. Option 3*

Option 3 would provide for the establishment of a non-statutory Agricultural Advisory Panel for Wales which could provide guidelines on best practice to farm businesses and would rely upon voluntary compliance.

The costs to the Welsh Government of establishing and supporting a non-statutory Agricultural Advisory Panel would be the same as Option 2 approximately £58,000 per annum. There would also be a transitional cost of approximately £5,000 for one-off communication costs. This option could potentially reduce costs to farm business as it would be a voluntary scheme with which they would not be required to comply. In relation to benefits, the level of benefit would depend upon the level of compliance by farm businesses. As with Option 2 costs and benefits to farms are not quantified.

## 6. Differences between the Bill and the Agricultural Wages Act 1948

**The wage regime proposed by the Bill is different to the previous legal framework provided by the *Agricultural Wages Act 1948* (‘the 1948 Act’) in a number of ways**

Some of these areas are highlighted below.

Establishment of the Panel and remit Section 1 of the 1948 Act, states that there ‘shall be’ an Agricultural Wages Board for England and Wales, placing a specific duty on Ministers to establish a Board.

**Section 2** of the Draft Bill in contrast does not in itself establish an Agricultural Advisory Panel for Wales or place such duties on Welsh Ministers. Instead it provides discretion for the Welsh Ministers to establish an **Agricultural Advisory Panel for Wales** by order, subject to the affirmative procedure.

The Bill also provides that the Agricultural Advisory Panel for Wales may have other functions delegated to it which, but are not limited to, the following:

- **promoting** careers in agriculture;
- **advising** the Welsh Ministers on the content of an Agricultural Wages Order; and
- **advising** the Welsh Ministers on any matters relating to the agricultural sector.

These powers are far wider than those vested in the AWB, which in general terms were limited to setting pay and conditions for agricultural workers in England and Wales.

### *6.1. Power to set Wage Rates*

**Section 3** of the Bill empowers Welsh Ministers (and not the Agricultural Advisory Panel for Wales proposed under **Section 2**) to set agricultural wage rates and other terms and conditions, by making an Agricultural Wages Order. The Order is subject to the negative procedure and Section 3 (6) of the Bill provides that the Welsh Ministers must consult such persons or bodies as they consider are likely to have an interest in the Order before making it.

If the Minister establishes an Agricultural Advisory Panel under Section 2 then the Minister can provide the Panel with a function that would allow the Panel to provide advice to the Minister on powers exercised under Section 3.



This is different to the situation in **Scotland** and **Northern Ireland**, where separate agricultural wage boards exist on a statutory basis under the *Agricultural Wages Scotland Act 1949* and the *Agricultural Wages (Regulation)(Northern Ireland) Order 1977*. In both these instances, it is the boards and not the government ministers who set the wage rates.

Prior to its abolition, the *Agricultural Wages Act 1948* ('the 1948 Act') empowered the AWB to set wage rates, holiday allowances and terms and conditions of employment.

Whilst Welsh Ministers had some powers under the 1948 Act in relation to the AWB, such as powers to appoint independent members, **they did not have powers to set wage rates directly or to intervene or override wage rates proposed by the Board.**

## 6.2. Consultation

Section 3 of the Bill requires Welsh Ministers to consult 'such persons as they consider are likely to have an interest in the Order' when preparing the Agricultural Wages Order. The Explanatory Memorandum states that the Welsh Government 'might' include farming unions and other sector representatives, farmers and agricultural workers.

The Bill, however, **does not include any provisions which set out the procedure or the minimum time frame for consultation** with stakeholders. The Bill does not either set out how notice of or a consultation on an Agricultural Wages Order in relation to wage setting should be undertaken by Welsh Ministers.

In contrast, the consultation requirements of the AWB, prior to its abolition, in relation to Agricultural Wages Order are set out in the 1948 Act. In particular, Schedule 4 requires the AWB to:

- To issue a public a notice setting out their proposals for an Agricultural Wages Order and the time and manner within which any objections or representations could be made;
- Allow at least fourteen days for objections to be submitted; and
- To give consideration to any objections made by people with an interest in the Order.

The Board could then choose to issue the Agricultural Wages Order or modify the Order to consider any objections made. If modifications were significant, the 1948 Act provides that the AWB could publish a further notice asking for further comments on its revised proposals in accordance with the requirements set out above.