

# **AWB Consultation Outcome Report**

---

## **Analysis of Consultation Responses and Departmental Response –**

Consultation on Proposal to revoke the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (Abolition of the Agricultural Wages Board)

**October 2021**

**Contents .....2**

**Introduction .....3**

**Summary of analysis .....5**

**Consultation questions .....6**

**Who responded .....6**

**Analysis approach .....6**

**Summary of key issues identified and Departmental responses .....8**

**Comments on the impact assessments on the proposals .....23**

**Regulatory Impact .....23**

**Equality Impact .....26**

**Rural Needs Impact .....29**

**Summary table of responses .....32**

**Annex 1    Abbreviations used**

**Annex 2    List of respondents**

## Introduction

The Department for Agriculture, Environment and Rural Affairs has recently carried out a consultation on the policy proposal to revoke the Agricultural Wages (Regulation) (Northern Ireland) Order 1977, which would abolish the Agricultural Wages Board. This consultation sought views on whether separate legislation and structures remain necessary in relation to the setting of pay and other terms and conditions of employment or whether the agriculture sector should be aligned with all other sectors of the Northern Ireland economy.

When introducing new measures, or a new or amended strategy, policy, procedure, or legislation, the Department is required to consider the impact the proposals may have on Section 75 groups and to have due regard to rural needs. Where regulation is being proposed, consideration of the regulatory impact is also required. Consultees were asked to comment on the analysis of the Equality Impact Assessment (EQIA), Regulatory Impact Assessment and Rural Needs Assessment. Comments received in relation to these Assessments have also been considered.

The Department has carefully considered the responses to the consultation. This document sets out a summary of the consultation responses and an overview of the Department's conclusions. The consultation was open between 14 May and 8 July 2021. The EQIA remained open for a further four weeks, closing on 5 August 2021.

The consultation was published on the DAERA website at:

<https://www.daera-ni.gov.uk/consultations/revoke-agricultural-wages-regulation-northern-ireland-order-1977>.

The consultation was also made available on the Citizen Space website at:

<https://consultations.nidirect.gov.uk/daera-central-services-contingency-planning/agricultural-wages-order-ni-1977>

This summary seeks to reflect the general views offered but, inevitably, it is not possible to describe all the responses in detail. DAERA has, for the purposes of publication, presented the comments received in summary format within this report, and has endeavoured to provide a broad overview encompassing the key issues highlighted. Readers should refer to the full transcript of responses, which has also been published, to read the comments in full. The original responses are published as received and have not been altered. All views, opinions and comments therein are those of the respondents. In line with the policy of openness, respondents were informed that their views would be made publicly available. Those wishing their comments to be treated confidentially were asked to make this clear. The responses have been placed online at:

[www.daera-ni.gov.uk/publications/summary-consultation-responses-proposal-revoke-agricultural-wages-regulation-northern-ireland-order](http://www.daera-ni.gov.uk/publications/summary-consultation-responses-proposal-revoke-agricultural-wages-regulation-northern-ireland-order)

A glossary of acronyms and abbreviations used in this paper is attached at Annex 1.

## Summary of analysis

In total, 16 responses were received to this consultation on the proposal to revoke the Agricultural Wages (Regulation) (Northern Ireland) Order 1977, which would abolish the Agricultural Wages Board. 15 of the 16 respondents provided comments in support of their views. Responses received demonstrate that there is support for, and opposition to, this proposal. Responses were fairly evenly split, with slightly more responses received in opposition to the proposal at 56% of the total and 44% were in support (9 responses against, 7 responses for). In terms of total number of comments made, approximately twice as many were received from those who oppose the proposal compared to those in support. Detailed responses were put forward by Unions who represent workers and employers on the Agricultural Wages Board. Responses were also received from Councils, NI political parties and other bodies with specific interests and responsibilities, as well as from individuals. Several responses referred to and endorsed the comments made by Unite the Union in opposition to the proposal.

A number of themes were identified from the comments received.

In summary, the comments of those **who support the proposal** pointed to the view that, due to developments in employment legislation in recent years, the AWB is no longer needed. They felt that the current system, whereby employers need to ensure they comply with the AWB and NMW/NLW regimes, is overly complicated and difficult to implement and that abolishing the AWB would reduce the administrative and regulatory burden on employers. They highlighted that the agriculture sector is the only sector of the NI economy which is subject to dual regimes and that the sector should be brought in line with the rest of the economy with employers and workers subject to the same provisions as those in all other sectors of the economy. Supporters of the proposal commented that, in order to retain valuable workers, it was their view that employers would ensure that rates of pay and certain conditions continue to reflect existing contracts, skills, experience, and management responsibilities and that these were unlikely to regress for the majority of workers due to external drivers and the continuing influence of the current regime and grade structure, which recognises a worker's qualifications, experience and responsibilities.

In summary, the comments of those **who oppose the proposal** pointed to what they considered to be significant benefits to workers in maintaining the current arrangements and it should not therefore be abolished. Responses pointed to these benefits of the agricultural wages regime including: successfully securing incomes for workers at a higher level to NMW; protection of vulnerable workers; overtime pay at 1.5 times the standard rate of pay; enhanced levels of Sick and Holiday Pay and entitlements; protection for section 75 groups and the benefits of the AWB as a collective bargaining instrument for the sector. There were concerns expressed that

removing the AWB would place agricultural workers at a disadvantage when compared with current pay, terms and conditions. Specific concerns in relation to the proposal were presented in relation to the impact on young, migrant and male workers. Responses pointed to a scenario whereby new entrants would be adversely affected under the NMW regime, and pointed to the agriculture sector in NI not being comparable to other parts of the UK and how this emphasises the need to retain the AWB in NI.

## Consultation Questions

The aim of the consultation was to give stakeholders an opportunity to comment on the Ministers proposal to revoke the Agricultural Wages Order 1977. Stakeholders were asked to respond to the following questions:

**1 – Do you support this proposal**

**2 – Do you have any additional views or comments you would wish the Department to consider in relation to the proposals**

In addition respondents were asked:

**Do you have any comments or additional information you wish to add in relation to the analysis of the accompanying:**

- i. Draft Regulatory Impact Assessment**
- ii. Draft Equality Impact Assessment**
- iii. Draft Rural Needs Impact Assessment**

## Who responded

Responses were received from a range of industry organisations, unions, representative organisations and individuals. There were 16 responses received before the end of the consultation period of 8 July 2021. Of the responses, 5 were by e-mail and 11 through Citizen Space. All the responses were considered and analysed.

A full list of respondents is included at Annex 2.

## Analysis approach

This analysis is a qualitative assessment of the commentary received in response to the consultation. The full range of opinion both for and against the abolition of the AWB has been summarised to assist with presentation, however the full responses are available to read at:

The number of respondents favouring either option have been provided but care should be taken in interpreting and using these numbers. In some cases, one response may include the view of only one person, while in others one response may be from an organisation representing many hundreds of people (who individually may or may have expressed an opinion on the matter or agree with the submitted response). Some responses make reference to having seen the response from Unite the Union and refer to that response in place of submitting additional commentary. Broad trends may be applicable, for example employers generally favour removing the AWB, whilst organisations representing workers believe it should be retained. However, we cannot assume that numbers are representative of the industry as a whole. For the purposes of compiling a summary table of responses at section 4, where more than one respondent has made the same, or broadly similar comment, the comment may feature only once. Readers are referred to the full responses for the detail of individual responses.

## Summary of key issues identified and Departmental responses

### Question – Do you support this proposal?

#### Summary of Comments

Sixteen written responses to the consultation document were received covering a number of different sectoral interests. A list of all respondents is included at Annex 2. We are grateful to all those who took the time and effort to respond.

- Total number of responses: 16<sup>1</sup>
- Respondents who answered ‘yes’ (abolish the AWB): 7 (44%)
- Respondents who answered ‘no’ (retain the AWB): 9 (56%)

Some of the common views and concerns received were as follows:

#### Key issue: Rationale for the AWB

**The consultation document set out the DAERA Minister’s rationale for the proposal to revoke the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (the AWO 1977). The consultation responses demonstrate that there is both agreement and disagreement with that rationale amongst stakeholders.**

The comments of those **who answered ‘no’** to this question were that the existing agricultural wage regime has worked well over a number of years with benefits to workers in particular, and to employers in terms of applying a standard negotiated framework. Many support the system in place and suggest its removal could lead to difficulties.

There were concerns expressed that removing the AWB would place agricultural workers at a disadvantage in comparison to their current pay and terms and conditions. The responses highlighted a number of benefits of having an AWB for agricultural workers including successfully securing incomes for workers at a higher level to NWM; protection of vulnerable workers; overtime pay at 1.5 times the standard rate of pay; enhanced levels of Sick and Holiday Pay and entitlements; protection for section 75 groups and the benefits of the AWB as a collective bargaining instrument for the sector. There were concerns expressed that removing the AWB would place agricultural workers at a disadvantage when compared with current pay, terms and conditions. Specific concerns were presented in relation to the impact on young, migrant and male workers. Responses pointed to the view that

---

<sup>1</sup> One respondent answered yes in error to this question. This has been clarified with the respondent and corrected within this report to accurately reflect the ‘for and against’ figures to be 7 and 9 respectively.



new entrants would be adversely affected under the NMW regime, and pointed to the agriculture sector in NI not being comparable to other parts of the UK and how this emphasises the need to retain the AWB in NI. Specific concerns in relation to the proposal were presented in relation to the impact on new, young, migrant, and male workers. Responses said that new entrants in the younger age categories, who are subject to a lower rate of pay under the age-based NMW than the grade-based AWB and would therefore be adversely affected under the proposal. It was commented that the agriculture sector in NI is not comparable to other parts of the UK and this supports retention of the AWB in NI.

Those **who answered 'yes'** supporting abolition of the AWB in NI believe that these arrangements are outdated and no longer necessary, pointing to a number of disadvantages including that the sector is unfairly treated as a result of this additional regulatory burden which is not applied to any other sector and there is duplication, complication and an increased time and risk of errors for agricultural employers who have to operate and comply with the AWB and NMW/NLW regimes. Respondents commented that there is no longer a need for separate legislation for agriculture following the introduction of a range of employment legislation which provides similar protections to those contained in the AWO 1977, which is applicable to all other sectors.

Responses from those who represent agricultural employers stated that they believe that, should the proposal be implemented, employers are likely to maintain the current rates of pay and the existing terms and conditions and they expected rates of pay to continue to reflect the grade-based system currently applicable reflecting skills, experience, and management responsibilities. They highlighted that farming is competing with other sectors for labour at time of a shortage and employers will be seeking to retain skilled and able workers, with whom they already have an established arrangement and that it is in employer's interests to reward workers with competitive wages and good working conditions.

## **Departmental Response**

The Department's view remains that the prevailing circumstances in the agriculture sector are now markedly different to those when the agricultural wages boards and wage-setting structures were first introduced in the post-world war context. Agricultural wage setting legislation was first introduced in the early 20<sup>th</sup> century and the current AWB structure for Northern Ireland dates from the Agricultural Wages (Regulation) Act (Northern Ireland) 1939. Since that time, the number of hired agricultural workers has fallen significantly from over 61,000 in 1912, to 39,222 in 1940 during the Second World War, to 6,738 paid workers in 2019.

In tandem with this, employment legislation has improved significantly across the board and offers similar protections and provisions to those contained in the AWB legislation, with some differences in pay thresholds and level of entitlements. This

includes legislation covering minimum wage, holiday entitlement and sick pay, with no other provision in law regarding enhanced overtime rates. Agriculture is now the only sector to remain under a separate regime.

The Department is of the view that these developments mean the case for retaining an AWB for NI is no longer as compelling due to the protections now in place for workers in all other sectors under current employment legislation.

### **Key issue - Administration of the current AWB regime**

**Responses show that there is support for simplifying the current system that requires agricultural employers to ensure they are compliant with both NMW and AWB legislation. It is considered that this would reduce the administrative burden that employers currently face. Against this, others feel that the current system continues to be necessary, and beneficial, and that the current burden associated with operation of a dual system is and outweighed by the advantages to workers and, in specific respects, to employers.**

Those **who answered 'no'** said that reducing red tape is not a sound rationale for removing the AWB. The cost to the taxpayer of supporting the AWB is not excessive in return for the benefits it provides for agricultural workers and the contribution it makes to the long term sustainability of the wider sector. Abolition of the AWB could reduce the salary/administrative burden on employers but the social and economic impact of the loss of revenue could be significant for low paid rural workers. It is also argued that the potential burden and cost (which is not quantified in the regulatory impact assessment) to individual employers of negotiating agreements with individual employees could create an additional administrative burden on employers and they may not be experienced in this area, leading to potential issues. It was also suggested that abolition of the AWB did not meet 5 of the 6 'tests' set out in relation to the New Decade New Approach agreement to review Arm's-Length Bodies.

Those **who answered 'yes'** stated that the Order is complicated, with more complex rules being misunderstood, introducing an increased risk of errors and demanding of additional time and attention. It is highlighted that there is confusion as to who is covered by the Order and who is covered by NMW. The AWO is viewed to be outdated, with the definition of agriculture not reflective of the industry today. Farms involved in diversification activities are not covered by the Order. Agricultural sick pay arrangements are complex and holiday pay arrangements require special calculations that most payroll systems cannot deal with. It is suggested that overtime rates are not affordable for employers and there is potential for discrimination regarding overtime following the introduction of the age-based NLW and a single set of minimum wage rules for all workers would be welcomed.

Revoking the AWB would mean a reduction in administrative and regulatory burdens for agricultural businesses (who already face a greater administrative and regulatory

burden compared to other sectors of the NI economy). There would be a small time and financial benefit to employers but the system would be simpler, easier to understand and apply with reduced potential for errors.

### **Departmental Response**

The responses indicate that employers can find it difficult and time consuming to ensure they are complying with NMW/NLW legislation and AWB rates at the same time and this represents an additional burden which other sectors of the economy, who operate solely to the NMW regime, are not subject to.

On the other hand, respondents who said 'no' in indicating their desire to maintain the current system said that the cost, time and complexity is not, in their view, sufficient cause to remove the current system and any administrative savings for employers estimated from abolishing the AWB are less significant than the benefits the AWB brings to the wider sector.

The Department considers that, with regard to administration, a single regime would be simpler and easier to operate and would increase clarity for everyone. It would reduce the burden on employers of operating and ensuring compliance with both regimes and any associated confusion for employers and workers in this regard. This simplification is somewhat tempered by the expectation that there will need to be legislative and operational arrangements made in respect of the protection of the current pay and terms and conditions covering an extended period of time (years) until such times as a contract of employment ends or is amended by agreement. Following this transitional period it is however reasonable to expect that the application of employment legislation would be simpler to operate, which should lead to administrative savings on a modest scale. It is also the case that, while the Regulatory Impact Assessment appropriately considers the potential financial costs and savings to the Department and tax payer, this is not a primary consideration for abolishing the AWB. Although such savings are expected to be minimal, it remains the Department's view that abolition would be consistent with the New Decade New Approach agreement in 2020, to review Arm's-Length Bodies with a view to rationalisation.

### **Key issue - (Impact on) Terms and Conditions of Employment**

**The respondents who oppose the proposal see the AWB as being essential to the protection of workers' rights. It is suggested that without these arrangements employers will engage in a 'race to the bottom' and seek to pay the minimum rates permissible by employment legislation. Against this, those who support the proposal are of the view that workers will be adequately protected by employment law that applies to all other sectors of the economy and reject the contention that employers will seek to impose the minimum rates.**

Those **who answered 'no'** said that abolishing the AWB would undermine workers' rights and entitlements. The AWB protects the rights of agricultural workers, some of whom they suggest are amongst the lowest skilled and lowest paid in the economy and society, and who provide a vital service in supporting the supply of food. It was stated that the abolition of the AWB opens the door to a post-Brexit race-to-the-bottom on workers', farmers' and farm families' pay and conditions and standards of living and were doubtful that existing terms would be protected. In addition to the potential for lower rates of pay, the freeze effect with regard to the impact on piece rates, overtime, sick and holiday and accommodation entitlements is highlighted.

Those **who answered 'yes'** said that it will be in employers' best interests to pay their employees the best rate of pay and ensure beneficial working conditions. They contend that farmers must offer good terms and conditions of employment and pay the most competitive wages to ensure that workers stay in their roles long-term (if appropriate) and enable them to hire and retain agricultural workers in competition with other sectors. It was also suggested that the introduction of the National Living Wage in 2016 and subsequent rises have substantially boosted low wages and earnings further. One respondent highlights that the impact of the introduction of the National Minimum Wage and National Living Wage has been to raise wages by 30% (20% in real terms), over the last 10 years *[uncited]*. This, it is suggested, is backed by the UK Government policy goal to make the minimum wage 66.66% of the median hourly wage by 2024 and this will raise wages by 15%.

### **Departmental Response**

The proposal would mean the agricultural sector is brought into line with the rest of the economy, with the same employment legislation applicable. All workers would receive the same minimum protections under wider employment law and UK minimum wage rates on the same basis as all other employees. This does not necessarily mean that the minimums will be applied, it is the threshold below which it would be unlawful to go. The protections offered by the AWO 1977 are covered elsewhere in newer employment legislation (at potentially different rates/levels), with the exception of overtime rates, for which there is no provision in other employment law.

For existing agricultural workers, the terms of a worker's employment contract which apply at the time the AWB would be abolished would continue to apply until such time as the contract is varied by agreement between the employer and the worker, or until the contract comes to an end. In other words, workers with contractual rights will continue to be entitled to those terms and conditions (which should be at least as beneficial as the terms provided for in the final Agricultural Wages Order), following the abolition of the Board, for as long as that contract lasts.

It should be noted however that the terms of any existing contracts would not automatically, unless by agreement, receive an annual review and, usually, an increase as they would have under the AWB regime.

New workers coming into the agriculture industry after abolition of the Board will not be entitled to the terms and conditions, including the 1.5 times overtime rate, set out in the final Agricultural Wages Order, but will be protected by the NMW and the safeguards afforded by wider employment legislation on holiday, sick and accommodation entitlements. Responses from those representing employers have indicated that employers are likely to continue to offer (and be required to in relation to contractual/transitional provisions for existing workers) pay and conditions commensurate with skills and experience. However there would be no requirement in law to continue to do so for new entrants, it is the national minimum entitlements which must be met.

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

### **Key issue: Impact on Collective Bargaining**

**Respondents who oppose the proposal want to cite the importance of the AWB as a mechanism for collective bargaining. Others have called for review of the structure and representation.**

Those **who answered 'no'** said that the AWB is the last collective bargaining body covering the private sector in Northern Ireland providing an important vehicle for sectoral bargaining. It was stated that abolition would mean the end of collective bargaining in agriculture with agricultural workers having to rely on employers to set wage rates. Some of the reasons put forward to justify the agriculture sector retaining an instrument of collective bargaining were that there is a particular logic for the AWB given the nature of employment (it is small in scale and difficult to collectively organise workers due to the dispersed nature), and the grant-subsidised nature of food production. A higher prevalence of workplace injury is cited and, augmented leave rights are viewed to be particularly necessary given the prevalence of migrant workers.

Comments were received that stated that the NI government's obligation under ILO Convention 98 is clear: maintain collective bargaining. Council of Europe's European Social Charter of 1961, Article 6, provides 'the right to bargain collectively' and to abolish the AWB is in breach of these obligations.

Those **who answered 'yes'** said that there was no continuing need/justification for the agriculture sector to be subject to separate arrangement and should thus be brought in line with all other sectors of the economy and added that it is unreasonable that agricultural workers have separate employment legislation from all other sectors of the labour force. There is adequate protection under general employment law and being in a special category may, in some measure, work against their employment.

### **Departmental Response**

The Department is content that obligations in respect of collective bargaining are not being breached and this is supported by legal advice. It is accepted that the nature of agriculture can make it more difficult to collectively organise. It is also the case that a substantial proportion of paid employees will have a direct working relationship with their employer due to the predominance of small farms in NI and are likely to have had some discussions with their employer regarding their terms and conditions. Responses received from those representing employers propose that employers will continue to agree rates above the NMW in many cases. Employers and workers are free to agree terms and rates above the minimum, however there is no provision in law beyond the statutory minimums set in legislation. It is recognised that some individuals find it more difficult than others to assert their rights. The Department will consider how, in the event of abolition, workers can be supported to be aware of their rights. It is also important to note that workers would continue to be subject to the protections in law, under the AWO or wider employment legislation, as appropriate to their contract status, each of which provide routes for complaint, investigation and enforcement.

### **Key issue - Impacts on specific groups – young, migrant and male workers**

**Those who oppose the proposal expressed strong views that the proposal will have a negative impact on these specific groups and that retention of the AWB will ensure these groups are not disproportionately affected. Some in favour of abolition have noted their belief that existing terms and conditions will be preserved for existing workers, it is also considered that national employment legislation and other regulatory bodies is sufficient to provide all workers, some of whom are outside the scope of the AWB regime, with a legal minimum level of protection on the same basis as for workers and employers in other sectors.**

Those **who answered 'no'** said that the proposed change to the legislation may have an adverse impact on age and racial group, particularly on minority communities (migrant workers) and young people. The AWB has always provided some level of protection in relation to the potential for future exploitation of agricultural workers, some of whom are migrant workers with limited English or social network support and provides the right to appeal if pay and conditions fall below

those set by the AWB and without the AWB seasonal workers would be disadvantaged. It is also suggested that the predominance of male over female within non-spousal workers means that the abolition is potentially discriminatory against males.

Those **who answered 'yes'** said that demographics show the high average age of workers so there will be a rapid increase in opportunity as a younger age group with much more formal training take the place of the older workers and are able to command higher wages.

It was said that current employment law and fair employment law makes the Order redundant. Agricultural seasonal workers are not fully regulated by the current law, in particular those from Roma and/or Gypsy community in NI. The current Gangmasters law covers agriculture, horticulture, processing and packaging of all fresh food, drink and other produce. Others suggested there is no evidence to support young migrant workers being likely to be paid less than others already doing the same work. Workers, particularly migrant workers, are in very short supply. Due to the pandemic, many seasonal workers returned home. New immigration requirements concentrate on those with qualifications and skills rather than on general workers and the general shortage of agricultural workers is likely to continue. It was stated the wage rate for migrant workers is estimated to have risen by 10% [uncited] in England over the past year as employers try to attract and retain workers, and a similar situation is developing in NI.

### **Departmental Response**

The draft EQIA found that, while there may be a differential impact on some groups, these are mostly a result of the existing profile of the agricultural sector, employers and employees. In the case of workers new to agriculture, or on a new contract, there is likely to be a differential impact. Younger and migrant workers are more likely to be in this position and thus not subject to retained AWO protections. The potential impact on individual workers would depend on a number of factors such as age, current grade, whether a contract applies and how employers are required to meet these obligations, which will be set out in legislation and, beyond this, if they choose to implement the minimum required or to supplement the minimum required.

There is some evidence to suggest that the average hourly rate for agricultural workers is currently higher than the minimum required, through the Annual Survey of Hours and Earnings. While there are limitations to this data, it shows that the median wage for agriculture (annual, weekly and hourly) has increased each year save one, since the AWB was abolished in England in 2013<sup>2</sup>. It is possible that, without the

---

<sup>2</sup> <https://www.ons.gov.uk/file?uri=/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/ashe1997to2015selectedestimates/current/ashe19972020timeseries.xls>

higher mandatory and standardised minimums set in the AWB Order, there could be some downward pressure on wage rates as a result of lower NMW rates being applicable in some cases. It is acknowledged that some respondents do not accept that there will be downward pressure as a result of wider factors affecting the labour market. The Department remains of the view that it is not expected that all workers would default to the minimum. Provisions would be made in legislation to protect existing terms and conditions as applicable. The Department is also of the view that pay rates are likely continue to reflect factors such as existing contracts and retained AWO rights, skills, experience, and management responsibilities and wider labour market conditions. However it is important to note that only the legal minimum is enforceable and there are likely to be some transfers onto the revised arrangements under the NMW and wider employment law for new and temporary workers which could be at a lower rate of pay, depending on a workers age.

The impact on employers will also depend on the factors above and may see some wage and labour costs lowered, but others may increase. The individual circumstances of agricultural businesses, as well as the labour market, may have an effect on the impacts they experience.

The evidence gathered indicates differences in the level of participation between men and women exist in agriculture and horticulture, which results in men being more likely to be affected by the proposal. There is no evidence to suggest that the proposal would further contribute to the existing gender imbalance.

In accordance with our statutory duties, the proposals have been considered in relation to Section 75 equality duties, rural needs and regulatory impacts. These are considered in more detail below. The draft assessments are available at:

<http://www.daera-ni.gov.uk/consultations/revoke-agricultural-wages-regulation-northern-ireland-order-1977>

#### **Key issue: (Impact on) Labour market/supply**

**Those in opposition to the proposal were of the view that abolition of the AWB would lead to labour shortages and referred to the situation in England following the abolition of the AWB, which it is stated led to negative impacts on labour market/supply, in combination with other external factors such as EU Exit. Those in favour of the proposal also highlight labour shortages as a concern attributable to broader factors, stating employers will reward workers in order to attract and retain skilled and experienced staff in competition with other sectors.**



Those **who answered ‘no’** said that since the AWB was removed in England there has been a loss of unprotected terms and the further immiseration of workers, widespread labour shortages and an inability to recruit. Abolition of the AWB is likely to reduce labour supply for agricultural producers.

Those **who answered ‘yes’** cite factors such as competition for workers in the labour market dictate wage rates and it is highly unlikely workers would face a reduction in their view. They highlighted the need to attract and retain workers and to compete with rising wages in competing industries; and that the drive towards the Living Wage level in NI will make the existing Order meaningless. Some are of the view that there will be no regression in wage rates, it will be the opposite, noting that farming is competing with other sectors for labour at a time of a shortage and farmers will be seeking to retain skilled and able workers. It is stated that it is in their interests to reward workers with competitive wages and good working conditions.

One respondent stated it is unlikely that employers would gain financially because they will maintain the present wages and benefits and competition for workers and rapidly rising benchmark wages have changed the whole labour market. Abolition would mean they would be competing on a level playing field, and that a more favourable rate of pay in the ROI where workers are covered by the NMW could lead to workers in border areas of NI seeking employment across the border exacerbating the shortage of available labour.

### **Departmental Response**

Subject to retained rights under the AWO for eligible workers, it is anticipated that the application of NMW/NLW employment legislation would ensure the sector is placed on the same footing as other sectors of the economy. It is recognised that there may be a heating or cooling effect depending on the supply of labour and status of other sectors with whom agriculture is competing with for workers. A number external factors are contributing to a labour shortage, including EU exit and stricter immigration rules and it is possible that in offering NMW rates, where these are less than the AWB rates and thus less attractive, could contribute to the labour shortage. This could, in turn, lead to higher pay rates being required to attract workers and an increase in labour costs for employers.

### **Key issue - Exploitation, Trafficking and Modern Slavery and Enforcement**

**Those in opposition feel strongly that the proposal would increase the risks of exploitation and questioned whether enforcement would be effective if the AWB is abolished. Those in favour pointed to the GLAA’s and others’ role in enforcement with regard to exploitation and minimum rates of pay.**

Those **who answered ‘no’** said that trafficking of agricultural field workers in Northern Ireland has been reported over the past years and modern day slavery is a

major problem in Northern Ireland. It was stated that, alongside the GLAA, the AWB plays a vital role in addressing potential exploitation of vulnerable migrant workers. It was claimed that, under the current arrangements, DAERA has a role of enforcement but under the proposed abolition this will be removed leaving enforcement exclusively to HMRC, which is highly likely to result in a loss of knowledge and local understanding within DAERA and places reliance on the underfunded HMRC which lacks capacity and that the prospect of effective enforcement by HMRC is low.

Those **who answered 'yes'** said that enforcement for labour providers is conducted by the GLAA, not the AWB, and the consequences of non-compliance are significant. In relation to the National Minimum/ Living Wage, The Department for Business, Energy and Industrial Strategy (BEIS) is responsible for minimum wage compliance and enforcement policy and HM Revenue and Customs (HMRC) enforces the National Minimum Wage Act on behalf of BEIS and that this could be easily adapted to cover agricultural workers in Northern Ireland.

### **Departmental Response**

Responses indicate there appears to be some lack of clarity as to the respective roles and responsibilities of the AWB, HMRC and the GLAA.

The AWB is currently responsible for the setting of minimum pay rates and other terms and conditions of employment. The AWB's role is to set minimum protections in relation to agricultural workers as defined in the AWO 1977 in respect of:

- Minimum rates of pay, including piece rates
- Holiday entitlements
- Sick leave entitlements
- Accommodation charges
- Rates of overtime

The power to take enforcement action on these matters is assigned to DAERA who can investigate and pursue a case on the worker's behalf. The AWB does not, however, have a remit or role in relation to the investigation or enforcement of trafficking or modern slavery offences in of itself. This responsibility lies with other statutory agencies, including the GLAA, PSNI, National Crime Agency, HMRC, UK Border Force and UK Immigration Enforcement and who are specifically trained and resourced to deal with these matters, and who hold appropriate powers of investigation and/or enforcement.

Agricultural workers who are supplied through a gangmaster have the added protection of the gangmaster licensing legislation, which is enforced by the

Gangmasters Labour Abuse Authority. It is a criminal offence to supply labour without a licence or use an unlicensed labour provider. Gangmasters will have to demonstrate that agricultural workers who are supplied to work in a farm business are paid in accordance with at least the NMW in order to be eligible for a gangmaster licence.

In the event of abolition and subject to the legal position with regard to the retained powers and provisions under the AWO 1977, DAERA officials will continue to be responsible for the enforcement of the AWO 1977 in relation to the retained rights under existing contracts. HMRC are responsible for the enforcement of the law on National Minimum and Living Wages and will be responsible for the enforcement of NMW/NLW matters in relation to workers in agriculture who are subject to these provisions.

The Department does not agree that with the contention that that the prospect of effective enforcement of NMW (or other) matters by HMRC and others is low. HMRC has dedicated resources for enforcement and has actively and successfully pursued cases across all sectors in Northern Ireland, against individuals and large organisations, for amounts ranging from amounts in the hundreds of pounds and upwards. HMRC already enforce the law in Northern Ireland in respect of their NMW remit and it is not expected that there will be any significant loss of local knowledge or expertise, and as happens now, that appropriate support will continue to be provided by other bodies and agencies as required/appropriate.

In the responses it was noted that there were 59 trafficking and modern slavery cases in 2018/2019. It is important to clarify that these cases were across all sectors and categories of exploitation<sup>3</sup>, but it is acknowledged that instances of labour exploitation could and have occurred in the agriculture sector.

At present DAERA is responsible for enforcing AWB pay rates, which apply to the majority of agricultural workers. No complaints requiring enforcement action have been received in the last three calendar years. Only a small proportion of agricultural workers will currently be subject to the NMW/NLW regimes (those who would otherwise be paid less under the AMW, e.g. a standard worker over the age of 23 who is entitled to the higher NLW), which is enforced by HMRC. None of the local employers listed in HMRC's December 2020 report for underpayment of the NMW were in the agriculture sector.

For existing agricultural workers, should the abolition proceed, the terms of a worker's employment contract which apply at the time would continue to apply until such time as the contract is varied by agreement between the employer and the worker, or until the contract comes to an end. In other words, workers with

---

<sup>3</sup> <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/modern-slavery-strategy-2019-2020.pdf>

contractual rights will continue to be entitled to those terms and conditions (which should be at least as beneficial as the terms provided for in the final Agricultural Wages Order), after the abolition of the Board. Agricultural workers continue to be protected by the NMW rate. Where, through time, the NMW increases beyond the contractual rate, the higher NMW rate must be paid. New workers coming into the agriculture industry after abolition of the Board will not be entitled to the terms and conditions set out in the final Agricultural Wages Order, but will be protected by the NMW and the protections afforded by wider employment legislation. DAERA would thus need to retain the powers of investigation/enforcement for as long as rights/terms under the AWB legislation remain in place under the transitional arrangements.

### **Key issue - Economic impact on employees, sector and rural areas**

**Those who oppose the proposal highlighted the potential impacts on rural workers and communities in particular. Those in favour referred to a reduction in administrative burden to rural businesses and that the sector would be brought in line with all the sectors of the economy.**

Those **who answered 'no'** said that the AWB is an important mechanism to address the social and economic needs of people who live and work in rural areas. DAERA argues that equivalent powers and protections will be afforded to the agriculture sector via existing employment legislation that covers other sectors of economy whilst confirming there will be a differential impact in terms of pay, terms and conditions compared to the existing AWB affecting age and ethnicity. Contrary to the statement that employees are less dependent on their employers for their livelihood and home, the situation is not that unusual today and that abolishing the AWB will impact upon the wages earned by rural farmers and farming families working on other farms out of economic necessity.

The view was stated that while abolition of the AWB could reduce the salary/ administrative burden on employers, the social and economic impact of the loss of revenue would be significant for low paid rural workers. It was also said that the £1.2 million that the Department estimate will benefit employers over the next 10 years from abolition of the AWB will be £1.2M taken from the pockets of agricultural workers who will be worse off and this will damage the rural economy and could depress rates in other sectors across NI as agricultural workers seek work elsewhere. Any depression of wages will depress demand in the economy (particularly the rural economy) and contribute to the economic vulnerability of workers, particularly seasonal migrant workers who face significant costs to access work, including visas, travel and clothing. There is no guaranteed work, yet workers are still charged for accommodation.

Those **who answered 'yes'** said that rural agriculture businesses are now the only sector to remain under a separate wages board. Revoking the AWB would mean a

reduction in administrative and regulatory burdens for rural agricultural businesses, who face a greater burden compared to other sectors of the NI economy. Abolition would put farming on the same footing as employers and workers in all other sectors of the wider economy, thereby ensuring fairness and equality. It is suggested current terms and conditions will be maintained, rates of pay would not regress and will continue to reflect existing contracts, skills, experience, retention of staff and management responsibilities. Farming is competing with other sectors for labour at time of a shortage and it is in their interests to reward workers with competitive wages and good working conditions. A view was stated that, from an administrative point of view, while there would be a small financial benefit for employers from simplification of the system, it is unlikely that employers would gain financially as they will maintain present wages and benefits due to competition for workers and rapidly rising benchmark wages, but at least agricultural employers would be competing on a level playing field.

### **Departmental Response**

The DAERA consultation document sets out the powers and protections under newer employment law, which are equivalent to those under the AWO 1977, noting that these may be at potentially different rates/levels; the exception being overtime rates, for which there is no provision in other employment law.

The differential impacts (positive or negative) which have been assessed and estimated are considered in comparison to the current AWB legislation. The costs and benefits of abolition of the AWB will primarily be monetary as set out in the Regulatory Impact Assessment (the limitations of the analysis are set out in the RIA). Some minor non-monetary benefits are expected in terms of time and efficiency for employers as a result of removal of duplication, however this is also encompassed in monetary terms. The majority of costs and benefits are transfers from workers to farmers. Transfers will take place primarily within the rural economy. The best estimate could result in a reduction in total wages earned by workers of £0.6m per annum on average (which would equate to £88 (ranging from £59 - £129) per paid worker per year. Annual leave and sick pay costs are included within this figure.

The best estimate suggests a benefit to employers of £0.7m per year. This equates to an approximate saving of £102 per annum per employee in total labour costs. This reflects the full labour costs to the employer and a reduced administrative burden on employers through the removal of duplication and overlap between the current AWB/NMW pay structures. The saving in AWB running costs is excluded.

The proposals aim to bring the sector into alignment with all other sectors and it is not considered that there will be a significant impact on the wider economy. The Defra Impact Assessment on its proposal to abolish the AWB in England in 2012 noted potential supply-side benefits in relation to flexibility in the labour market and potential increased employment with a corresponding benefit to the local economy.

However it notes that the calculation is problematic and lacks the necessary data and certainty; and therefore makes no attempt to quantify any potential impacts. Due to the significantly smaller number of employers and employees in Northern Ireland, it is likely that any potential for increased employment would be significantly smaller than in England.

### **Other issues**

It was suggested that the AWB could be reformed rather than abolished. Those **who answered 'no'** said that there is a need to reform the AWB and take into account the unique position of the Agricultural sector in NI today which plays a pivotal role in the food supply chain. Every effort should be made to reform and retain the AWB given the positive impact that the Board has on the sector, especially in protecting the rights of vulnerable employees. It was suggested that the AWB remit could be extended, on a similar basis to the AWB in Scotland.

Those **who answered 'yes'** stated that the AWB arrangements and the definition of agricultural workers are outdated, no longer necessary and put the agriculture sector at a disadvantage compared with other sectors. It is suggested that if employers were to follow the ETI base code for worker welfare and use the NMW guidance, agricultural workers will be safeguarded against poor practices.

One respondent proposed the need for a Northern Ireland Farm Welfare Bill, alongside retention of the AWB.

### **Departmental Response**

The Department does not consider that reformation of the AWB to increase its remit would achieve the intended objective of the proposal as set out and could result in the agriculture sector potentially subject to an increased administrative and legislative burdens, vis a vis other sectors.

The issue of the Farm Welfare Bill is outside of the scope of this consultation and is not considered in this response.

## Comments on the impact assessments on the proposals

### Regulatory Impact

#### Summary of Comments

The majority of respondents did not comment directly on the Regulatory Impact Assessment (RIA). A number referred to the Unite the Union response, which it was indicated they had seen and endorsed. For those who did comment, these included a range of comments as summarised below.

Several noted concern that the regulatory impact assessment indicates a potential transfer of £600,000 annually from workers to employers and that the grade based minimum rates are higher than age-based minimum rates. Others challenged the DAERA analysis of a possible reduction in total wages as 'speculation' that does not take into account wider external drivers such as competition for workers in the labour market, influenced by current entitlements, and thus did not agree that a regression of wages was likely.

Some respondents felt that the removal of the AWB arrangements would not simplify the administrative and regulatory burden, as employers will have to negotiate conditions and pay rates with employees instead of reliance on the AWB rates, which may be time consuming and employers potentially have little experience in, noting that the cost of this element is not quantified. Others argued that the financial, administrative and regulatory burden places agricultural employers at a disadvantage relative to other employers and the wages framework itself is confusing and time consuming, and has to be operated alongside NMW legislation. Some suggested that the abolition would be beneficial to the Department only and others felt that the cost to the Department was not reflective of the true costs, as no formal enforcement has been required over the last number of years and should enforcement be required in future the cost could be significantly more.

Some respondents suggested that review or reform of the AWB would be a third option, in addition to the two listed in the RIA (Do nothing or Abolish), another expressed concern with regard to the limitations of the methodology which are set out by DAERA in the RIA.

Some respondents are concerned about the loss of an enhanced rate of overtime (1.5 times the standard rate). Others highlighted that the Agricultural Wages Order does not guarantee overtime and that this can act as a dis-benefit to overtime being offered to employees, as employers cannot cover the high cost.

#### Departmental Response

The Department acknowledges the concerns expressed on both sides of the issue in relation to the risks and uncertainties inherent in the methodology used for the

Regulatory Impact Assessment, which are set out in within that assessment. DAERA economists have prepared the analysis using a similar methodology to that used in Defra in relation to the abolition of the AWB in England. The RIA takes account of pay rates (including holiday, sick and overtime entitlements) and an estimated turnover rate, but is applied equally across all workers as it is not possible to complete the RIA on an individualised basis, or on future employer behaviour, outside of what would be required by the revised minimums and any future transitional protections. It is acknowledged that the burden is likely to be disproportionately on those who would not benefit from transitional protections, such as new workers who are likely to be younger or on temporary contracts, including seasonal migrant workers.

DAERA recognises that the cost of running the AWB is exclusive of any enforcement action in the last three calendar years and that the running cost is relatively minor, when compared with the cost of other bodies. While the assessment properly includes the cost of running the AWB and the potential for a relatively small saving in this regard, and it is considered to be consistent with the New Decade New Approach agreement to seek to rationalise ALBs, the potential savings are modest and not in of themselves a key factor in the decision to pursue abolition.

The balance of the administrative burden has been considered in relation to the before/after position. While it is the case that pay negotiations will need to be undertaken by employers and employees (or their representatives), this is not viewed, for the majority of farm businesses, to be a significant additional burden. Almost 80%<sup>4</sup> of farms in NI are classified as 'very small', broadly equivalent of up to one full time worker and almost 80% of these are the owner/occupier. Only 7% of farms are categorised as 'large' (due to being few in number the 'very large' farm figures are encompassed in the 'large' category), which is broadly equivalent of to 3 > 5 full time workers, while very large is greater than five. Therefore most farm business do not employ labour and, for those who do, a substantial proportion of employers are likely to be dealing with very few employees, on a one to one basis. For those larger business with more employees the burden may be higher, but it is also considered more likely that businesses with the highest number of staff are also more likely to have experienced management and/or human resource staff to deal with employee issues. It is acknowledged that, should the proposal proceed, the required transitional provisions to protect the terms of the existing worker contracts, would mean that there would be a continuing burden for agricultural employers who will have to maintain the AWO arrangements until contracts come to an end or are re-negotiated by agreement and this could be for an extended period of time.

---

<sup>4</sup> <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Agricultural%20Census%202019%20FINAL%20-%20Revised%2027%2008%2020.pdf>



It is also acknowledged that while an employer would only be legally obligated to apply the minimum (including the preserved agricultural wage and protections where applicable) it may be necessary, or they may choose to pay above the minimum in response to other external drivers, including attracting and retaining staff, skills and labour shortages and competition for labour, as well as skills and experience and the requirements of the job.

With regard to the RIA options, further reform or review of the AWB would not meet the Minister's stated policy intention and is not therefore under consideration at this time. It would not therefore be appropriate to include this as an option in the RIA as a result.

The Department is seeking legal advice as to how the transitional protections could be set out in law and is giving consideration to how employers and workers would be kept informed with regard to any changes.

Before being finalised, the draft RIA will be reviewed to reflect on these comments. However, it is not expected that the overall conclusions of the assessment will change.

## Equality Impact

### Summary of Comments

Of those who commented, most agreed with the findings of DAERA's Equality Impact Assessment that the proposal is likely to disproportionately affect new, seasonal migrant workers and younger workers who will be subject to the revised terms and conditions due to the nature of their employment. As 'new' or temporary/seasonal workers, they are less likely to have an existing contract of employment under the AWO 1977 and thus would be most affected by the change from the grade-based agricultural wage rates to the age-based National Minimum Wage system, particularly for those aged 22 and under, who would be subject to the lower rates of NMW pay.

Some respondents felt that new agriculture workers should not be disadvantaged as a result of their age and were not assured that current agriculture workers will continue to receive the same pay and conditions following abolition of the AWB.

Respondents had disparate views regarding the context set out by DAERA, with some disputing the idea that personal communications technology meant that workers were likely to be better connected and informed (noting the gap between awareness and the ability to act on it), were less likely to be dependent on their employer for accommodation and that agriculture is not under the same pressure as it was in the post-world war years.

Some respondents noted the necessity of migrant workers to the sustainability of the agri-food system and the pressures agricultural business are facing. They also agreed that migrant workers may face additional barriers as a result of language, lack of support systems and the temporary nature of their employment.

Several respondents pointed to agricultural sector as being particularly vulnerable to exploitation, trafficking and modern-day slavery, noting a reliance on gangmasters and concerns regarding the future enforcement arrangements. One respondent noted that ethnic minorities have been lower paid, even where they are similarly skilled/ experienced.

Another respondent challenged the perceived suggestion of possible racial and age discrimination which is based on the assumption that young migrant workers could be paid less than others already doing the same work, stating there is no evidence to support this.

Some felt that the lower NMW rates would act as a disincentive for potential new entrants, in the context of labour pressures and shortages. Others stated that this was likely to result in enhanced rates of pay to the benefit of new workers, who may

also be likely to be better qualified than their predecessors and capable of commanding higher pay rates.

## **Departmental Response**

The Department set out in the consultation papers some of the changes in context for the agriculture sector, which have a bearing on whether there is a continuing need to maintain separate arrangements for agriculture. In doing so, it is not suggested that there are no issues of this nature remaining or indeed new/different pressures on the sector. In particular it is recognised that while agricultural workers are significantly fewer in number, more mobile and better connected through technology, migrant workers in particular may still rely on their employer for accommodation, as well as facing communication and other barriers and this is also recognised in the assessment. Similarly, food security is not driven by the *same* post-world war concerns, however it is recognised that the sector faces many other pressures.

Under this proposal, the powers currently held by the AWB, subject to the transitional arrangements, would be maintained through other routes, though not necessarily at the same rates/level, with the exception of overtime rates, which are not provided for in law outside of the AWO. The protection of the current terms for applicable workers would be made in law, subject to Assembly passage and would continue to be enforceable by DAERA.

Section 75 impacts have been considered in relation to this proposal. The EQIA identifies a likelihood of a ***differential*** impact on the basis of age and race. Males are also likely to be more affected, but this is noted to be a reflection of the current gender profile of workers in agriculture. It is not suggested that agricultural employers are (or will be) discriminatory in respect of race or age. The potential for a differential impact results from the nature of the employment and the increased likelihood of being a newer or temporary/seasonal worker, who will not have an existing contract of employment and therefore would not retain terms provided under the AWO 1977. They would instead receive the NMW, which is age-based, and the less favourable entitlements provided under other legislation in relation to holiday, sick and accommodation rates. Pay rates for standard workers aged 16-22 are currently lower under the NMW, than under the AMW rates. For standard workers aged 23 and over, the national living wage (NLW) applies and is higher than the AWO rates (NMW/NLW already applies to those workers who would otherwise earn less under the AWO). This is how the identified differential impact arises. New and younger workers will maintain the same legal minimum protections on the same basis as younger workers in all other sectors, but may be subject to a lower legal minimum rate of pay than their predecessors in agriculture were. This would be the case unless an employer chooses to pay over this rate or until such time as they become eligible for the NLW. The Low Pay Commission, who advise the UK Government on NMW rates, has recommended that it works towards extending the

NLW to those aged 21 on a phased basis and this has been accepted, subject to monitoring of the reduction in April 2021 from age 25 to 23.

As stated earlier, the responses suggest there is some confusion as to the role of the AWB. The AWB is currently responsible for the setting of minimum pay rates and other terms and conditions of employment. The power to take enforcement action is delegated to DAERA who can investigate and pursue a case on the worker's behalf. As before, the AWB does not, however, have a remit or role in relation to the investigation or enforcement of trafficking or modern slavery offences. This responsibility lies with other statutory agencies, who are specifically trained and resourced to deal with these matters, and who hold appropriate powers of investigation and/or enforcement.

As the majority of comments agreed with the findings of the draft EQIA it is not expected that the overall conclusions of the assessment will change. Before being finalised however, the draft EQIA will be reviewed to reflect on the comments made. The Department will also give further consideration to if and how the identified impacts could be addressed and minimised where possible, such as through the provision of information in other languages, helping to make workers aware of their rights if revised and through continuing to offer learning and development opportunities with the aim of increasing skills and employability for younger workers.

## **Rural Needs Impact**

### **Summary of Comments**

As before, the majority of respondents did not respond directly to the questions on the Rural Needs Impact Assessment (RNIA). Commentary within body of responses has been considered and reflected, where appropriate.

Some respondents highlighted, that given the prevalence of agriculture in rural areas, it was evident that rural areas would be most affected in terms of social and economic outcomes. Clarification was also sought as to the 'structural' differences between rural and urban areas as noted in the assessment and the potential impact of these on migrant and younger workers, and issues around access to employment and services. Concerns regarding standards of living, youth poverty, reduced employment opportunities for younger people and the potential for a depressive effect on pay in rural areas were highlighted. Others disagreed that there was likely to be downward pressure on pay due to other external factors including a shortage of and competition for labour which, it was suggested, would have the opposite effect and that agricultural employers would not engage in a race to the bottom approach and would instead choose to maintain the terms of employment in reflection of the current context.

There was criticism of DAERA's reliance on previous consultation and engagement on the issue and lack of direct engagement in advance of the current consultation and the apparent omission of an assessment of the potential impact of changes to overtime, accommodation costs, paid holiday entitlement, sick leave and pay which are identified as key issues.

Some disagreed with the assertion that existing contracts are expected to continue to apply and with DAERA's assessment that it was unlikely that the minimum will be the default level of pay for all agricultural workers in future. Some also disagreed that workers were now less dependent on their employer for their livelihood and home.

Other respondents noted that it is unreasonable that agricultural workers have separate employment legislation to all other sectors of the labour force, when there is adequate protection under general employment law. It was put forward that being in a special category may act as a disbenefit and work against employment opportunities. It was also suggested that demographics show the high average age of workers which will result in a rapid increase in opportunity for younger workers who have more formal training and will be able to command higher wages. It was also stated that workers were now more mobile and better informed as to their rights and the opportunities available to them.

## Departmental Response

It is clear from the consultation that there is significant divergence in opinion as to what is likely to happen in the future and concerns on both sides of the argument are noted.

The RNIA acknowledges that rural areas will be most affected by the proposal, due to the rural nature of agriculture; this is the case in relation to any positive and negative impacts. The term 'structural differences' is referenced in relation to rural and urban areas in terms of employment and economic opportunities. As noted above the key difference being that agriculture is most prevalent in rural areas, and employers and potentially to a lesser extent employees (including prospective employees) are more likely to be from, or attached by virtue of work, to rural areas. It is recognised that rural areas can be affected differently by issues such as access to services, transport and employment for example, with fewer options as regards these issues than urban areas. This DAERA [infographic](#)<sup>5</sup> sets out some comparisons by way of further context.

Overtime, holiday and sick pay implications have been considered and were set out in the consultation document for comment. The impact of these factors were included in the cost/benefit analysis undertaken by DAERA economists, which underpins the regulatory impact assessment. It is expected that the rights of existing workers in agriculture, including these aspects, would be preserved at the current level of entitlement in legislation for applicable workers.

The Department has noted the comments made in relation to pre-consultation engagement. Pre-consultation engagement was undertaken with Unite the Union, as representatives of agricultural workers, and the UFU, as representatives of the farming industry/employers, in relation to this proposal. Views put forward in a previous exercise were considered in the development of the proposal, the consultation document and in the draft impact assessments, subject to this further consultation. The current consultation was issued to those who had previously offered views and to around 200 organisations, representative groups, individuals and interested parties and publicised through DAERA's media channels.

It is acknowledged that factors other than the minimum entitlements set in law can and do influence pay and terms of employment. It is also important to recognise that it is the minimum rates which are proposed to change in law, therefore an assessment has to be made of the effect of the changes to the legal position (subject to transitional provisions and arrangements) as this is what would be enforceable. It is recognised that employers could choose to go beyond the legal minimums due to

---

<sup>5</sup> <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/rural-statistics-infographic-2016-final.pdf>

external factors and, as noted in the consultation, there is also some evidence to suggest that some employers already pay above the minimum currently required, but it may also be the case that employers choose to implement the NMW for new workers/ contracts.

Before being finalised, the draft RNIA will be reviewed to reflect on these comments but it is not expected that the overall conclusions of the assessment will change.

## Summary table of responses

The full responses received in relation to this consultation have been published and are available at: [www.daera-ni.gov.uk/publications/summary-consultation-responses-proposal-revoke-agricultural-wages-regulation-northern-ireland-order](http://www.daera-ni.gov.uk/publications/summary-consultation-responses-proposal-revoke-agricultural-wages-regulation-northern-ireland-order)

The views and comments reflected below, are those of respondents. Comments have been summarised, and in some cases paraphrased by DAERA, for brevity. It is not possible nor intended to reflect every comment in full in the format below, although it does aim to be reflective of the views as stated. Where a substantially similar comment has been made by more than one respondent, it may not feature against every respondent. For further details and the full and original wording, please see the responses at the link provided. Consultee responses are listed in alphabetical order below.

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
<b>Association of Labour Providers (ALP)</b>	<b>A</b>	<ul style="list-style-type: none"> <li>• Special arrangements for agriculture are no longer relevant and if the separate NIAWO did not exist there would be no justification whatever for introducing it;</li> <li>• Workers on contracts for services were never covered by AWO;</li> <li>• Interpretations of what is and what is not “agriculture” creates inconsistency;</li> <li>• AWB overtime rate at 50% denies the opportunity of working longer hours and earning more;</li> <li>• The Act is unnecessarily complicated and requires special administrative arrangements, incompatible with existing IT systems;</li> <li>• Enforcement for labour providers is conducted by the GLAA and the consequences of non-compliance are significant.</li> </ul>
<b>ESRC: Feeding the Nation</b>	<b>R</b>	<ul style="list-style-type: none"> <li>• Representation can prove difficult for seasonal workers due to the temporary nature of employment and unfamiliarity with rights or support systems;</li> <li>• Seasonal migrant workers will be disadvantaged with implications for equality and diversity on the grounds of race and ethnicity;</li> <li>• The rationale to bring agriculture into line with all other sectors of the NI economy does not translate due to the specificity of the working context;</li> </ul>



Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<ul style="list-style-type: none"> <li>The proposed abolition and accommodation cost rise may contribute to the economic vulnerability of workers, particularly seasonal migrant workers who face significant costs to access work, including visas, travel and clothing. There is no guaranteed work, yet workers are still charged for accommodation, so it is essential that living costs are affordable.</li> </ul>
<b>Farmers For Action</b>	<b>R</b>	<ul style="list-style-type: none"> <li>Refers DAERA to the Unite response;</li> <li>States a need for Northern Ireland Farm Welfare Bill to enable family farmers (employers) to have the finance to lift the farming industry out of poverty and be in a financial position to back up the proper wages, conditions and standards required, supported by the continuation of the Agricultural Wages Board;</li> <li>Farmers For Action are not prepared to see the demise the AWB or any body that was put in place for the good of rural Northern Ireland, nor tolerate slave labour or farming families not being properly paid for their labour.</li> </ul>
<b>Fermanagh and Omagh District Council</b>	<b>R</b>	<ul style="list-style-type: none"> <li>Benefit to workers pay and conditions and offers protection at a time of uncertainty;</li> <li>Abolition of the AWB in England has not positively impacted on workers or businesses, particularly the lowest paid;</li> <li>AWB has played a key role in guaranteeing minimum standards on wages/pay; sick pay and holiday pay and helps to protect against exploitation;</li> <li>Queries the number of farm workers outlined within the documents<sup>6</sup>;</li> <li>AWB provides a forum for worker representation in a disparate sector,</li> </ul>

<sup>6</sup> DAERA figures are taken from the Agricultural Census 2019 and are available at: Farm Labour Statistics in Northern Ireland from 1981 to 2019: [www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland](http://www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland)

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<p>including vulnerable migrant workers who face additional barriers;</p> <ul style="list-style-type: none"> <li>• Highlights the issue of modern slavery;</li> <li>• Avoids need for individual pay negotiations saving time and money;</li> <li>• Impact on long-term sustainability of the farming sector;</li> <li>• May be seen as a cost saving measure for the Department;</li> <li>• Higher prevalence of workplace injury, augmented holiday and bereavement rights are particularly necessary for low paid migrant workers;</li> <li>• Acknowledges improved employment legislation and additional burden on farm employers, while strongly urging retention and reformation of the AWB rather than abolition.</li> </ul>
<b>Fresh Fields</b>	<b>A</b>	<ul style="list-style-type: none"> <li>• No continuing need for separate legislation;</li> <li>• Applying the ETI base code for worker welfare and NMW guidance, will safeguard agricultural workers.</li> </ul>
<b>Green Party</b>	<b>R</b>	<ul style="list-style-type: none"> <li>• Getting rid of the AWB would drive down wages of the youngest workers, and impact upon youth poverty rates in rural areas and on skill development;</li> <li>• Abolition will mean the end of collective bargaining in agriculture and leave agricultural workers more vulnerable to exploitation;</li> <li>• The AWB is key to ensuring that agricultural workers can influence the conditions under which they work and the wages they receive;</li> <li>• It is not acceptable to leave the setting of wage rates to individual employers;</li> <li>• Wages fell following the abolition of the AWB in England and Wales, and enhanced rates for overtime, night work and other premiums disappeared;</li> <li>• The cost of running the current AWB is not significant;</li> <li>• [DAERA's assessment that] abolition of the AWB will save employers £1.2m over the next ten years, assuming will come out of the pockets of workers.</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
<b>Irish Congress of Trade Unions NI Committee</b>	<b>R</b>	<ul style="list-style-type: none"> <li>• The NI Executive need to promote collective bargaining and sectoral bargaining to promote the interest of workers, improve productivity and rebuild our economy;</li> <li>• Low pay is a serious issue in NI with 25% of all workers earning below the real living wage;</li> <li>• The AWB is a crucial forum that seeks to bargain and agree wages and other matters across the agricultural industry, abolishing it will do nothing to address the pandemic of low pay in NI, it will exacerbate the issue;</li> <li>• Employment rights being a devolved matter in NI gives an opportunity to use it as a spur and lever to boost productivity and address low pay;</li> <li>• Endorses the Unite response.</li> </ul>
<b>McCloy, R.</b>	<b>A</b>	<ul style="list-style-type: none"> <li>• The legislation and AWB framework is outdated, confusing and not fit for purpose and has been superseded by the NMW/NLW;</li> <li>• The Low Pay Commission, in giving advice to the Government on the NMW and NLW, takes a broader look at the economy, future trends and affordability of wage increases;</li> <li>• Labour market conditions are overtaking minimum wage rates, NLW is likely to become the benchmark wage level, pulling all wages higher;</li> <li>• Agricultural employers currently experience greater costs, regulatory and administrative burden and it is unreasonable to have separate legislation;</li> <li>• Employers need to attract, compete for and retain staff and will maintain current rates and terms of workers including holiday entitlement and sick leave arrangements and offer flexibility. There will be no regression in wage rates, quite the opposite;</li> <li>• There would be a small administrative financial benefit for employers but the system would be much simpler and easier to understand and apply;</li> <li>• DAERA analysis of a possible reduction in total wages is speculation and a</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<p>worst case scenario that takes no account of the fast changing employment and wage situation that has arisen over the last two years;</p> <ul style="list-style-type: none"> <li>• The wage rate for migrant workers is estimated to have risen by 10% in England over the past year as employers try to attract and retain workers;</li> <li>• The agricultural workforce is much more mobile, living in villages or towns and some work for several farmers or contractors over large areas and therefore aware of what is available in other work and can take into account other matters such as holidays and sick pay when considering best options.</li> </ul>
<b>NI Council for Racial Equality (NICRE)</b>	<b>A</b>	<ul style="list-style-type: none"> <li>• EU citizens, particularly the Roma and/or Gypsy community, are vulnerable to exploitation;</li> <li>• Agrees seasonal migrant workers may subject to lower rate of pay under NMW law than under the AWB grade-based pay regime;</li> <li>• EU Exit has led to a stricter skills threshold needed to recruit workers;</li> <li>• Notes additional barriers for migrant workers such as language and a lack of local networks or connections, trust and reliance on /influence of gangmasters;</li> <li>• Current employment law and fair employment law and makes the AWO redundant;</li> <li>• Agricultural seasonal workers not fully regulated by the current law;</li> <li>• Gangmasters Labour Abuse Authority replaces the current arrangements for agriculture and covers food processing in addition to other legislation;</li> <li>• Some ethnic groups are paid less than white counterparts with the same experience and qualifications.</li> </ul>
<b>Molenan Estate</b>	<b>A</b>	<ul style="list-style-type: none"> <li>• Offer pay above the minimum wage, to a level that is equal to their qualifications and competency.</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
O'Neill, B.	R	N/A
Roy Lyttle Limited	A	<ul style="list-style-type: none"> <li>Other Government Legislation regarding wage rates and holiday pay introduced in the past few years has meant the AWB is not relevant.</li> </ul>
Rural Community Network	R	<ul style="list-style-type: none"> <li>Higher AWB rates incentives young people to enter/remain within agriculture and seek formal qualifications and skills, providing progression opportunities for young people in rural communities, retaining a skilled workforce in agriculture and contributing to the sustainability of rural areas;</li> <li>The AWB rate being higher than the NMW provides a boost to the income of people aged 16-21 employed in the industry, many of whom may only be employed on a seasonal or casual basis and to workers in skilled and managerial grades;</li> <li>Abolition could reduce the salary/administrative burden on employers but would disadvantage low paid rural workers;</li> <li>AWB ensures agricultural workers have reasonable minimum terms and conditions of employment including holiday entitlement, holiday pay and sick pay, which is important for workers facing additional health and safety risks;</li> <li>Concern at removal the protection of the overtime rate which offers recognition of long, seasonal hours and supplements relatively low wage;</li> <li>Cost of the AWB is not excessive in return for benefits provided to workers and long term sustainability of the wider sector;</li> <li>The assertion that due to mobile phones workers are likely to be better connected and more aware of their rights fails to take into account the needs of migrant workers who may have difficulty understanding English. Knowing employment rights is one thing, but having confidence to assert those rights against their employer is another;</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<ul style="list-style-type: none"> <li>• Critical of a lack of pre-consultation engagement;</li> <li>• Disagrees that existing contracts are expected to continue to apply;</li> <li>• AWB provides significant protection to some of the most vulnerable workers, including migrant workers on part-time contracts/ seasonal work.</li> </ul>
<b>Sinn Féin</b>	<b>R</b>	<ul style="list-style-type: none"> <li>• AWB is an important mechanism to address the social and economic needs of people who live and work in rural areas and abolishing it will disproportionately affect rural areas, seasonal migrant workers and young people;</li> <li>• Reducing red tape is not a sound rationale for removing the AWB;</li> <li>• DAERA should set out clearly what the structural differences are and the impact of these;</li> <li>• There is no mention of agriculture workers who may be on zero contact hours;</li> <li>• Has concern regarding the ‘significant’ level of uncertainty regarding available data on economic and regulatory impacts, and use of average figures;</li> <li>• The AWB sets the floor for minimum standards in regards to pay, sick pay and holiday pay and workers starting out in this sector can be paid a wage above the minimum wage which is important for workers’ rights and sustainability of the sector by enticing younger workers into agriculture;</li> <li>• The proposal, will undermine the rights and entitlements that have been secured by the AWB and goes against the commitments made in New Decade New Approach to create good jobs and protect workers’ rights;</li> <li>• Are not assured that current agriculture workers will continue under the existing AWB structure;</li> <li>• The pressures facing the sector currently emphasises the need for retaining the AWB to ensure agricultural workers are protected.</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
<b>Ulster Farmers Union</b>	<b>A</b>	<ul style="list-style-type: none"> <li>• Farmers rely upon labour to operate and maintain their farming enterprises. Unlike in GB, it is more often than not the individual farmer themselves with assistance from family members. Those who did employ external labour do so [mainly] in small numbers and often on a short-term/casual basis;</li> <li>• The existence of the Board helped to ensure a stable labour market for farmers and farm workers, especially in the years following the Second World War, but the AWB legislation and structure is no longer necessary, is outdated and is not considered to be representative of agriculture/current circumstances;</li> <li>• Similar protections and provisions to those contained in the AWB legislation have been introduced for all industry sectors, with some minor differences in pay thresholds and level of entitlements;</li> <li>• NMW and NLW has superseded the AWB, increases to NMW/NLW are significant, ambitious and outpace AWB, where NMW or NLW rates are higher than AWB rates, these must be paid;</li> <li>• There are no apprenticeship schemes for NI agriculture employees and the (NMW apprentice) rate does not apply, the inclusion of this rate in the consultation document is challenged. Adoption of the apprenticeship grade is a potential mitigation for any impact on young people;</li> <li>• The introduction of the National Living Wage has eroded the age differentials which were necessary to ensure a rational annual pay increase. From 2016 onwards NMW/NLW increased disproportionately, creating an artificial benchmark when it came to wage setting;</li> <li>• The number of paid agricultural workers has fallen significantly from 61,000 in 1912 to 6,738 in 2019 and is expected to decrease further;</li> <li>• Farming has changed immeasurably since the AWB was first conceived, even in the last decade e.g. with the onset of precision farming via GPS technology, leading to greater production efficiency and through the widespread adoption of modern farm practices, technology and mechanisation;</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<ul style="list-style-type: none"> <li>• When the AWB was in formed, employees lacked information as to what they were entitled to. Workers are now more aware of rights and have more access to information and communications technology and associated methods of whistle-blowing;</li> <li>• The AWO 1977 definition of an agricultural worker is outdated. Confusion is inevitable when agricultural and horticultural businesses have to operate both AWB and NMW regimes. Revoking the AWB would create a simpler and clearer process for employers and employees, reducing duplication and confusion regarding the appropriate rate of pay;</li> <li>• The current cost of the AWB reflects that there has been no enforcement action taken in recent years, the true cost could potentially be a lot higher should enforcement powers be required and deployed;</li> <li>• On abolition enforcement powers would be legislated for and undertaken by other agencies in respect of the NMW, with significant penalties for underpayment. Workers are entitled to request access to an Employment Tribunal;</li> <li>• Abolition aligns with ROI and England, which will improve sectoral fairness and competitiveness;</li> <li>• There is a UK wide labour shortage across sectors. Immigration limits are creating a shortage of workers for the agricultural and horticultural industries. Farmers must pay the most competitive wages to ensure that workers stay in their roles long-term and enable them to hire the best talent before competitors;</li> <li>• Agriculture is the only sector to remain under a separate wages board, abolition puts farming on the fair and equal footing to other sectors;</li> <li>• There are significant supply chain issues arising from the Northern Ireland Protocol, Covid and the last impact of the container ship getting stuck in the Suez Canal, impacting on food, building materials, farm inputs and other products;</li> </ul>



Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<ul style="list-style-type: none"> <li>• The potential for downward pressure on pay is challenged, it is in employers interest to reward workers with competitive wages and good working conditions to retain skilled and able workers in competition with other sectors and a labour shortage;</li> <li>• The gap between the AWB and NMW rates for ages 18-20 is closing, but remains 39p below the AWB rate at present. This will eventually reach parity (and pass it) as UFU members seek to retain labour;</li> <li>• Overtime is offered and paid on the basis of needs on the farm business. It will be in the interest of the farmer employer to pay a competitive overtime rate if they wish to get the work done, often against a tight time frame in terms of the weather, deadlines for orders and ongoing market challenges. This also applies to holiday allowance;</li> <li>• Temporary, casual or new workers would be unaffected by changes to sick pay, the farmer employer will ensure parity in terms of sick pay provision.</li> </ul>
<b>Unite</b>	<b>R</b>	<ul style="list-style-type: none"> <li>• That numbers in paid agricultural employment have fallen substantially does not affect the need to retain protections for farm workers or agricultural field producers. Supermarkets maintain pressure for cheap food which in turn pressurises farmers to reduce labour costs;</li> <li>• A very significant proportion of the total employed on farms/agricultural field production are categorised as not formally paid;</li> <li>• Abolition of the AWB opens the door to a post-Brexit race-to-the-bottom on workers' (and farmers') pay and conditions;</li> <li>• There is a major gap between being aware of rights and having the wherewithal to assert them, particularly for migrant workers who may encounter linguistic barriers, issues with their legal status and lack awareness of services;</li> <li>• Budgets for community and voluntary organisations which publicise agricultural field sector workers' rights are inadequate, especially for minority languages;</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<ul style="list-style-type: none"> <li>• Supply and demand do not determine wage level for agricultural workers who often have little option but to take up any opportunity of work;</li> <li>• Department estimates employers will benefit by £1.2 million over the next ten years from the abolition of the AWB, taken from the pockets of agricultural workers who will be worse off;</li> <li>• NMW is lower than the standard hourly AWB rate set not taking into consideration higher rates payable for overtime, night work, on-call time, and waiting time;</li> <li>• There have been reports of human trafficking and modern day slavery in agriculture and Northern Ireland and alongside the GLAA, the AWB plays a vital role in addressing potential exploitation of vulnerable migrant workers;</li> <li>• There are questions over future enforcement of underpayment including budgets, resourcing, capacity and loss of local knowledge;</li> <li>• Abolishing the AWB will have a sharp impact on poverty rates in economically disadvantaged groups (young and migrant workers). Section 75 duties implications have not been fully considered by the Department;</li> <li>• It is unlikely terms and conditions would be retained in relation to overtime rates, sick pay and holiday time and misses the likelihood (at best) that pay rates are likely to remain frozen until they are 'caught up' by the NMW;</li> <li>• Abolishment of the AWB would violate the Trade and Co-operation agreement as well as ILO Convention 98 and European Social Charter Article 6(2);</li> <li>• The agriculture sector is unique, plays a vital role in securing food supplies and receives huge sums in subsidies and grants. Farm and agricultural field workers face structural obstacles to effective collective organising and negotiating with employers; historically reflected through the existence of the AWB;</li> <li>• The obvious solution to confusion as to determination of which rates of pay [NMW/NLW/AMW] apply to which workers and which tasks is paying the higher</li> </ul>

Consultee	Response Abolish (A) or Retain (R)	Comments in Summary <a href="#">[Click here to see the full comments]</a>
		<p>rate across the board, given that it is not much higher;</p> <ul style="list-style-type: none"> <li>• There is potential to extend the scope and remit of the Agricultural Wages Board, on a similar basis to those in Scotland and Wales;</li> <li>• Plans to abolish the AWB fail to meet the tests set out by the Executive in relation to the NDNA review;</li> <li>• Changes in employment law which the consultation document asserts have made the AWB unnecessary are not evidenced;</li> <li>• The regulatory impact assessment confirms that workers will bear the brunt of the impact of the abolition, offering a 'best estimate' that annually £600,000 will come out of workers' pockets and into employers'.</li> </ul>

**ABBREVIATIONS USED**

AMW:	Agricultural Minimum Wage (rates made under the AWO 1977)
BEIS:	Department for Business, Energy and Industrial Strategy
CJEU:	Court of Justice for the European Union
DAERA:	Department of Agriculture, Environment and Rural Affairs, NI
DEFRA:	Department for Environment, Food and Rural Affairs, England
EQIA:	Equality Impact Assessment
ETI:	Ethical Trading Initiative
GLAA:	Gangmasters and Labour Abuse Authority
HMRC:	Her Majesty's Revenue and Customs
NI:	Northern Ireland
NLW:	National Living Wage
NMW:	National Minimum Wage
RIA:	Regulatory Impact Assessment.
RNIA:	Rural Needs Impact Assessment
ROI:	Republic of Ireland
TIFF:	Total Income from Farming
1977 Order:	Agricultural Wages (Regulation) (Northern Ireland) Order 1977

**LIST OF RESPONDENTS**

Association of Labour Providers (ALP)

ESRC: Feeding the Nation

Farmers for Action

Fermanagh and Omagh District Council

Fresh Fields

Green Party

Irish Congress of Trade Unions NI Committee

McCloy, R.

Molenan Estate

Northern Ireland Council for Racial Equality (NICRE)

O'Neill, B.

Roy Lyttle Limited

Rural Community Network

Sinn Féin

Ulster Farmers Union

Unite the Union