

## **DRAFT REGULATORY IMPACT ASSESSMENT**

<b>Title:</b> Proposal to revoke the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (AWO 1977) (Abolition of the Agricultural Wages Board)	<b>Regulatory Impact Assessment (RIA)</b>
	<b>Date:</b> April 2021
	<b>Type of measure:</b> Primary Legislation
<b>Lead department or agency:</b> DAERA	<b>Stage:</b> Initial
	<b>Source of intervention:</b> Domestic NI
<b>Other departments or agencies:</b>	<b>Contact details:</b> ALB Corporate Sponsor and Public Appointments Branch Room 354, Dundonald House, Upper Newtownards Road, Belfast, BT4 3SB
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### **Summary Intervention and Options**

<p><b>What is the problem under consideration? Why is government intervention necessary?</b></p> <p>The proposal considers whether government intervention in the agricultural labour market, by way of the Agricultural Wages Board (AWB) and the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (Abolition of the Agricultural Wages Board) remains necessary. The AWB sets statutory terms and conditions for employment of workers in the agriculture sector. It is proposed that the NI Assembly should consider abolishing the agricultural wages framework to bring agriculture within the same employment legislation applicable to employers and workers in all other sectors of the economy.</p>
<p><b>What are the policy objectives and the intended effects?</b></p> <p>The proposal, subject to Executive agreement and passage through the NI Assembly, would provide for the abolition of the AWB in Northern Ireland. This would simplify the legislation to be applied to agricultural workers' pay, terms and conditions, removing the existing duplication and overlap between the AWB legislation and other employment legislation. This would reduce the regulatory and administrative burden on agricultural businesses and bring agricultural workers under the provisions of wider employment law and UK minimum wage rates, bringing the agricultural sector into line with all other sectors of the local economy. The main effect would be in relation to the application of the National Minimum Wage (NMW).</p>

**What policy options have been considered, including any alternatives to regulation?  
Please justify preferred option (further details in Evidence Base)**

Option 1 – Do nothing, maintaining the status quo. This is the baseline option.

Option 2 – Abolition of the Agricultural Wages Board, through revocation of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977.

The powers and provisions under the AWB regime overlap/intersect with existing provisions in wider employment legislation, in particular in relation to the National Minimum Wage, the Working Time Regulations and Statutory Sick Pay, which are applicable to all other sectors, though at potentially differential thresholds and levels of entitlement. Option One would maintain the current protections for agricultural workers as is, but would not remove the regulatory burden or duplication between the applicable legislative regimes for employers. It would not therefore achieve the full aims of the proposal. Option Two is considered the most appropriate route to achieving the dual aims above, and is the preferred option.

<b>Will the policy be reviewed?</b> Yes	<b>If applicable, set review date:</b> TBC
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**Cost of Preferred (or more likely) Option**

Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
Neutral/ Minimal <sup>1</sup>	£0.6m <sup>2</sup>	£0.01 <sup>3</sup>

<b>Does Implementation go beyond minimum EU requirements?</b>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<b>Is this measure likely to impact on trade and investment?</b>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Are any of these organisations in scope?	<b>Micro</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <input type="checkbox"/>	<b>Small</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <input type="checkbox"/>
	<b>Medium</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <input type="checkbox"/>	<b>Large</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <input type="checkbox"/>

**The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.**

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1</sup> No assessment of the outlay cost is available. While there may be some initial outlay costs in the transition period, these are expected to be minimal/neutral for agricultural employers as they are already required to fulfil administration of AWB and NMW rates as applicable to their employees. Savings are expected over time as a result of operating under one legislative framework, rather than two.

<sup>2</sup> This is a potential cost to workers.

<sup>3</sup> Saving of £24,187 for DAERA annually in respect of administrative support to the AWB (however staff costs of c.£12k will not result in any saving as a result of redeployment. Impact on cost of enforcement is expected to be neutral as responsibility would transfer from DAERA to HMRC, who are already responsible for enforcing NMW legislation as required. The cost is expected to be minimal; fewer than ten complaints have been received in the preceding ten years, with zero complaints in the last three years.

**ECONOMIC ASSESSMENT (Option 1)**

Costs (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
	(constant price)	Years		
<b>Low</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>0</b>
<b>High</b>	<b>0</b>		<b>0</b>	<b>0</b>
<b>Best Estimate</b>	<b>0</b>		<b>0</b>	<b>0</b>

**Description and scale of key monetised costs by ‘main affected groups’**

Maintaining the status quo will not increase costs for employers or workers, from the current position, other than costs to the employer of annual pay rises agreed by the AWB and/ or rises in NMW. However agricultural employers currently experience greater costs and regulatory and administrative burden compared with other sectors of the economy due to the AWB framework and the overlap with other employment legislation, in particular the NMW.

**Other key non-monetised costs by ‘main affected groups’**

The AWB and NMW legislative frameworks are currently in operation therefore there is no additional non-monetised cost in maintaining the status quo. As above, agricultural employers currently experience greater costs and regulatory and administrative burden, with greater potential for confusion, compared with other sectors of the economy due to the AWB framework and the overlap with other employment legislation, in particular the NMW.

Benefits (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
	(constant price)	Years		
<b>Low</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>0</b>
<b>High</b>	<b>0</b>		<b>0</b>	<b>0</b>
<b>Best Estimate</b>	<b>0</b>		<b>0</b>	<b>0</b>

**Description and scale of key monetised benefits by ‘main affected groups’**

Maintaining the current status quo will not increase benefits for employers or workers from their current position (other than to employees of annually agreed pay rises). However some agricultural employees, particularly the youngest categories of workers at standard grades of the AWB regime, (3% are aged under 18, 10% are 18-20, 14% are 21-24 and 73% are over 25)<sup>4</sup> are likely to be in receipt of higher pay than similarly aged counterparts in other sectors who are paid according to the age-related NMW thresholds.

**Other key non-monetised benefits by ‘main affected groups’**

Maintaining the status quo would preserve the current system in place which most agricultural employers and employees will be accustomed to.

<sup>4</sup> Hired and Paid Labour Survey 2019, DAERA

**Key Assumptions, Sensitivities, Risks**

Option One is based on the maintenance of the status quo, as per the current position. The baseline option is therefore zero. This does not assess or take account of the greater cost and regulatory/ administrative burden currently imposed on agricultural employers due to operation of the AWB framework and the overlap with other employment legislation (in particular the NMW/NLW) compared to other sectors of the economy.

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct Impact on business (Equivalent Annual) £m</b>				
<b>Costs: 0</b>	<b>Benefits: 0</b>	<b>Net: 0</b>		

**Cross Border Issues (Option 1)****How does this option compare to other UK regions and to EU Member States (particularly Republic of Ireland)**

The AWB was abolished in England and Wales in October 2013. The primary reasons cited were simplification and removal of outdated regulation, public reform, and the existence of the NMW rates. The Welsh Government subsequently re-instated arrangements on a devolved basis through the Agricultural Wages (Wales) Order 2016. The Scottish AWB has also been retained. Therefore, for agricultural workers in England only the NMW and NLW rates apply, whilst agricultural rates continue to apply for workers in Scotland and Wales. The NMW applies to most agricultural employees in the Republic of Ireland.

**ECONOMIC ASSESSMENT (Option 2)**

Costs (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
	(constant price)	Years		
<b>Low</b>	<b>-0.01</b>	<b>10</b>	<b>0</b>	<b>0.01</b>
<b>High</b>	<b>-0.01</b>		<b>3.2</b>	<b>35.2</b>
<b>Best Estimate</b>	<b>-0.01</b>		<b>0.6</b>	<b>6.5</b>

**Description and scale of key monetised costs by ‘main affected groups’**

Variation between the low/high/best estimates reflects the level of uncertainty regarding these figures. The total cost is over 10 years. The transitional cost relates to the reduction in running costs for the AWB (excluding DAERA staff costs).

DAERA analysis suggests a best estimate which 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<sup>5</sup>. Annual leave and sick pay costs are included within this figure. The uncertainties, assumptions and risks in relation to these figures are set out below.

Employment costs which are transfer payments to government and others by farmers, will fall in relation to any fall in wages.

**Other key non-monetised costs by ‘main affected groups’**

Employers and employees will need to become familiar with the new regime, however this is expected to have a minimal impact as the NMW provisions are already applicable where the AWB rate would otherwise fall below these rates.

Benefits (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
	(constant price)	Years		
<b>Low</b>	<b>0.01</b>	<b>10</b>	<b>0</b>	<b>0.01</b>
<b>High</b>	<b>0.01</b>		<b>3.6</b>	<b>40.1</b>
<b>Best Estimate</b>	<b>0.01</b>		<b>0.7</b>	<b>7.7</b>

<sup>5</sup> 6,738 paid employees in 2019 - <https://www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland>

### Description and scale of key monetised benefits by 'main affected groups'

Variation between the low/high/best estimates reflects the level of uncertainty regarding these figures.

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. 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 to public expenditure in AWB running costs is excluded.

The transitional cost applies in respect of the average annual running costs of the AWB. No cost is included for employers as they are currently operating the dual pay regimes and likely to be involved in contract negotiations/administration to some extent on an annual basis, therefore these are assumed to balance out.

### Other key non-monetised benefits by 'main affected groups'

There are likely to be time and efficiency savings for employers. As above, this may need to be balanced against an additional burden in relation to contract negotiations with individuals. As 88% of farm business in NI are small or very small, with the remaining 12% medium or large, most are likely to have a small number of paid employees<sup>6</sup> and the burden of this element is likely to be similar or only marginally higher than the current arrangements referred to above.

### Key Assumptions, Sensitivities, Risks

As noted above, variation between the low/high/best estimates reflects the level of uncertainty regarding these figures. There is also uncertainty as to the future behaviour of employers and the extent to which they would choose to apply the statutory minimums or maintain the current level of entitlement.

This assessment has been prepared to take account of the Impact Assessment (IA) undertaken by Defra<sup>7</sup> in relation to the abolition of the AWB in England and Wales in 2013, as well as the local circumstances in Northern Ireland and the latest available NI data<sup>8</sup>. There are a number of areas of risk and uncertainty in the assumptions for the values that underpin the costs and benefits calculations. The costs and benefits are largely transfers between groups (employees and employers) and the extent of these is subject to a high level of uncertainty.

## BUSINESS ASSESSMENT (Option 2)

Direct Impact on business (Equivalent Annual) £m				
Costs: 0.6	Benefits: 0.7	Net: 0.1		

<sup>6</sup> <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Stats%20Review%202019%20final.pdf>

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82649/awb-consult-final-ia-20121219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/82649/awb-consult-final-ia-20121219.pdf)

<sup>8</sup> Analysis of AWB and NMW pay rates are as per the 2020 rates. Commentary reflects this analysis and the update to these rates as of 1 April 2021. Statistical data primarily dates from 2019/2020 or as otherwise indicated.

## **Cross Border Issues (Option 2)**

### **How does this option compare to other UK regions and to EU Member States (particularly Republic of Ireland)**

As per Option One. The AWB was abolished in England and Wales in October 2013. The primary reasons cited were simplification of and removal of outdated regulation, public reform, and NMW rates. The Welsh Government subsequently re-instated arrangements on a devolved basis through the Agricultural Wages (Wales) Order 2016. The Scottish AWB has also been retained. Consequently for agricultural workers in England the NMW and NLW rates apply, whilst agricultural rates continue to apply for workers in Scotland and Wales. The NMW in the Republic of Ireland applies to agricultural employees.

## **1. Background**

The Agricultural Wages Board (AWB) for Northern Ireland is a Non-Departmental Public Body (NDPB) of the Department of Agriculture, Environment and Rural Affairs (DAERA) and which operates under the Agricultural Wages (Regulation) (NI) Order 1977. The Board has the power to:

- set the minimum rate of pay;
- determine the type and value of deductions that an employment may make from a worker's gross pay;
- set the amount of holiday entitlement and holiday pay; and
- set the level of sick pay.

Appointments to the Board are also made under the 1977 Order and comprise:

- three members appointed by the Minister of Agriculture, Environment and Rural Affairs (one of these independent members is appointed as Chair);
- to represent agricultural employers, six members of the Ulster Farmers Union (UFU); and
- to represent agricultural employees, six members of Unite the Union.

AWB members are remunerated for attendance at three meetings annually plus travel expenses. The Agricultural Wages Board does not employ staff directly and secretariat support is provided by DAERA. This equates to approximately 50% of a full time post at Staff Officer (SO) level. The cost of operating the Board, including secretariat staff and administrative costs, but excluding enforcement costs, has averaged around £23,000 per year over the last 3 years.

The 1977 Order also provides for enforcement of the AWB Order(s). This includes detailing certain enforcement provisions of the National Minimum Wage Act 1998 as having effect for the purposes of the AWB order, and stating that the Department may appoint officers to act for the purposes of the 1997 Order. AWB enforcement powers include the power to request wage records or other such information, issue enforcement notices, order payment of any underpayment of wages and to undertake civil proceedings to recover such sums.

The Department has the power to initiate civil proceedings on behalf of a worker for recovery of any underpayment. The employee also maintains the right to present a complaint to an Industrial Tribunal, or initiate any other legal proceedings, to recover sums due on their own behalf.

In the past 3 years, the Department received no formal complaints against employers.

## **2. Problem Under Consideration**

The Minister of Agriculture, Environment and Rural Affairs intends to bring forward proposals for consideration by the Northern Ireland Executive to revoke the Agricultural Wages (Regulation) (NI) Order 1977, which would abolish the Agricultural Wages Board in Northern Ireland and will require primary legislation.

The proposal considers whether government intervention (by way of the Agricultural Wages Board) remains necessary in view of changes in context in agricultural and employment practices and wider employment law, including the National Minimum and Living Wage regime.

Abolition of the Board would end the setting of specific wage rates, and other terms and conditions, for the agriculture sector. Similar powers and protections offered by the AWB legislation would be maintained (with some differential impacts) through other applicable legislation, bringing the sector into line with all other sectors of the economy. This would simplify and reduce the regulatory and administrative landscape for agricultural businesses and maintain protections for agricultural workers on the same basis as workers in other sectors. There are likely to be some differential outcomes (favourable and unfavourable) across the sector and for particular groups in comparison to the current position, which are considered in more detail below.

The proposal aims to remove duplication and simplify and reduce the regulatory and Administrative burden on agricultural businesses; while protections for agricultural workers are maintained on the same basis as all other workers afforded by wider employment law and UK minimum wage rates (with the some differential provisions and impacts).

### **3. Rationale for abolition of the AWB in Northern Ireland**

Agricultural wages boards and wage-setting in the agricultural sector in the UK date back to the period immediately following the First World War. The Agricultural Wages Board (AWB) for Northern Ireland has its origins in the Agricultural Wages (Regulation) Act (Northern Ireland) 1939. The existence of the Board during the 20<sup>th</sup> Century helped ensure a stable labour market for farmers and farm workers and secure agricultural production. However the nature of agriculture, the operating context, the agricultural labour market and employment law is now markedly different.

#### The existence of modern employment law and the minimum wage

A key driver for change is the existence of modern employment law and national minimum wage rates. The level of protection afforded to workers in every sector, at both UK and NI level, is now greatly improved. Previously, the nature of farm working necessitated the creation of a body that could determine a minimum rate of wages and working conditions on the behalf of agricultural workers. There was a considerably higher number of agricultural workers in the early 20<sup>th</sup> century which has now 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<sup>9</sup>.

Modern employment law is, to a large extent, now carrying out similar functions to that of the AWB (noting that there are some differences in pay thresholds and levels of entitlement). The existence of legislation covering minimum wage, holiday entitlement and sick pay suggests there is less need for the agricultural sector in Northern Ireland to be subject to a specific and separate regime. Agriculture is now the only sector in

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<sup>9</sup> <https://www.daera-ni.gov.uk/publications/historical-labour-data-1912-date> and Agricultural Census 2019 - 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)

Northern Ireland to remain subject to the provisions of a Wages Board, all other such Boards for other sectors have previously been abolished.

The UK National Minimum Wage was introduced in 1998, followed by the higher National Living Wage in April 2016, which provides a higher pay rate for those then aged 25 and over, and which has since been extended to those aged 23 and over from 1 April 2021. Legislation implemented since the creation of the AWB in Northern Ireland also prevents the Board here setting a rate lower than National Minimum Wage (NMW) or National Living Wage (NLW) rates.

The NMW and NLW are set by the UK government on the basis of recommendations by the Low Pay Commission (LPC). The LPC is an independent body made up of employers, trade unions and economic and labour experts on a full UK basis, including the agriculture sector since the abolition of the AWB in England in 2013.

Additionally the Gangmasters (Licensing) Act 2004 established the Gangmasters Licensing Authority (GLA) in 2005 to operate a licensing scheme, set licensing conditions and maintain a register of licensed gangmasters (labour providers). The Gangmasters Licensing Authority (GLA) role is to curb the exploitation of workers in the agriculture, horticulture, shellfish gathering and associated processing and packaging industries. The licensing scheme covers labour providers operating in these sector and prevents anyone from acting as a gangmaster in these areas without a licence and makes it an offence for a person to enter into an arrangement with an unlicensed gangmaster.

#### Simplifying and clarifying employment legislation applicable to agriculture

Currently, agricultural businesses have to be aware of, and adapt to, agricultural wages orders in addition to changes in the minimum wage and general employment law. This has the effect of placing a greater administrative and regulatory burden on agricultural businesses than on businesses in other sectors of the NI economy. Abolishing the AWB in Northern Ireland would simplify the regulatory framework for agricultural businesses and place the sector on the same footing as others.

The existence of agricultural wages legislation in addition to minimum wage legislation has, in the past, created some confusion regarding the appropriate rate of pay. This is because the definition of "agriculture" as set out in The Agricultural Wages (Regulation) (NI) Order 1977 is:

**"agriculture" includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, market gardens and nursery grounds, the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, the scutching of flax and tow and any process preparatory to or connected with the scutching of flax or tow"**

Packing and processing are outside this definition. There can be uncertainty around the appropriate ray of pay for workers carrying out different roles or activities. This can also apply to different aspects of work carried out by the same worker. Businesses have to determine to whom the AWB minimum rate applies and to whom the national or living wage applies, or even what proportion of time an individual spends doing

“agricultural” work, and what proportion should be considered work related to processing.

The EU Farm Structure Survey in 2016 showed that approximately 11% of NI farms engaged in some diversification activity, including tourism, equine sport, food processing and renewable energy. Any paid labour for these activities would not fall under the AWB orders, but rather the NMW/NLW legislation, further adding to the uncertainty and administrative burden on the business.

#### **4. Policy objective**

The proposal, if agreed by the NI Assembly, would provide for the abolition of the AWB in Northern Ireland, thereby reducing the regulatory and administrative burden on agricultural businesses and bringing agricultural workers under the protections afforded by wider employment law and UK minimum wage rates. This would simplify the legislation to be applied to agricultural workers’ pay, terms and conditions, removing the existing duplication and overlap between the AWB legislation and other employment legislation. The main effect would be in relation to the application of the National Minimum Wage. This would bring the agricultural sector into line with all other sectors of the local economy.

#### **5. Options**

##### **Option 1: Status Quo – Agricultural Wages Board and associated legislation is retained**

This option would maintain the status quo. The Agricultural Wages Board in Northern Ireland would remain in place. There would be no changes to the agricultural wages legislation and the Board would continue to operate within the existing legislative framework. The Board would continue to hold annual wage negotiations and make an annual Agricultural Wages Order. Farm businesses would still be required to understand and comply with the annual Agricultural Wages Order. Businesses would continue to have to operate dual regimes where applicable. Agricultural workers and employers would need to update themselves each year on any changes that may have been made in the Agricultural Wages Order, in addition to any changes in the National Minimum Wage. Agricultural workers would remain entitled to the terms and conditions of the current Agricultural Wages Order.

DAERA would remain responsible for providing support to the Agricultural Wages Board and for investigating and enforcing complaints about underpayment of the agricultural minimum wage.

##### **Option 2: Abolition of the Agricultural Wage Board and revocation of the Agricultural Wages (Regulation) Order 1977.**

Under this option the Agricultural Wages Board in Northern Ireland would be abolished, which would be a deregulatory measure. Wider employment legislation such as the National Minimum Wage legislation and Working Time Regulations would then apply. This would end the separate employment regime for agricultural workers in Northern Ireland and bring employment terms and conditions in the agricultural sector into line with those in all other sectors of the economy.

The terms of a workers employment contract which existed at the time the AWB is abolished are expected to continue to apply until such time as the contract were to be varied by agreement between the employer and the worker, or until the contract came to an end.

New workers coming into the agriculture industry would no longer be entitled to the terms and conditions of the Agricultural Wages Order, but would be entitled to the National Minimum Wage and the protection of wider employment legislation.

Responsibility for enforcement of the National Minimum Wage rests with Her Majesty's Revenue and Customs (HMRC), who already hold this remit in relation to all other sectors in Northern Ireland. Should the AWB be abolished, arrangements will need to be put in place with regard to the agriculture sector.

## 6. Analysis of evidence and impact

### Changes to legislative provisions resulting from abolition of the AWB

The table below outlines the key differences that would result from the AWB being abolished and agricultural workers being brought into line with all other sectors of the economy in Northern Ireland:

Measure	For Agricultural Workers	For Other Workers
<b>Minimum rate of pay</b>	AWB NI rates (outlined below)	NMW & NLW rates (outlined below)
<b>Minimum rate of overtime</b>	1.5 times the hourly rate of pay (for any hours over 39 hrs/week)	None set
<b>Maximum amount deductible for provision of accommodation</b>	£45.00/week	£58.52/week
<b>Paid holiday entitlement</b>	5.6 weeks/year (28 days for a worker working 5 days a week) + one additional day for workers employed for over a year	5.6 weeks/year (28 days for a worker working 5 days a week)
<b>Amount of paid sick leave</b>	After one year's continuous employment and paid after being off sick for 4 or more days, a maximum of 60 days in a rolling 12 month period or 120 days in a rolling 48 month period.	Paid after being off sick for 4 or more days, Statutory Sick Pay (SSP) for a maximum of 28 weeks
<b>Level of sick pay</b>	1/10 <sup>th</sup> the weekly minimum rate of AWB pay for each day sick, plus SSP	SSP = £95.85/week

## Minimum rates of pay

Current AWO minimum rates from 1 April 2021 are:

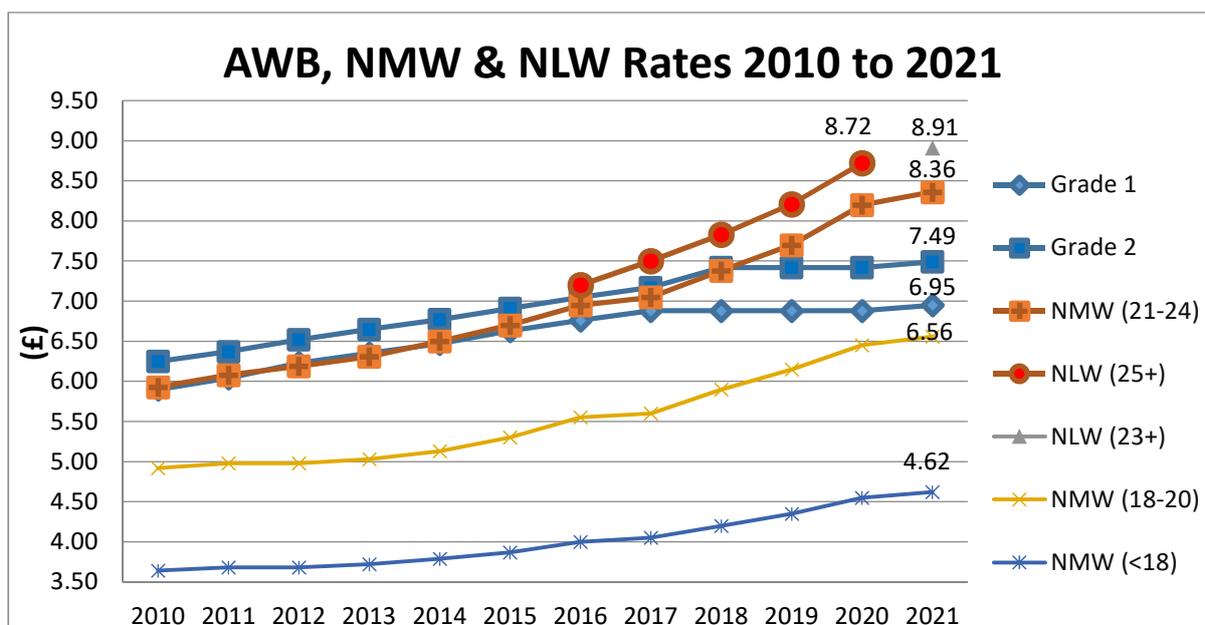
Grade	Rate per hour (£) <sup>10</sup>
<b>Grade 1</b> (for first 40 weeks cumulative employment)	<b>6.95</b>
<b>Grade 2 standard worker</b>	<b>7.49</b>
<b>Grade 3 lead worker</b>	<b>8.91</b>
<b>Grade 4 craft grade</b>	<b>9.58</b>
<b>Grade 5 supervisory grade</b>	<b>10.09</b>
<b>Grade 6 farm management grade</b>	<b>10.95</b>

Current NMW and NLW rates from 1 April 2021\* are

23 and over	21 to 22	18 to 20	Under 18	Apprentice
£8.91	£8.36	£6.56	£4.62	£4.30

\*Where the NMW or NLW rates are higher than AWO rates, an agricultural worker in Northern Ireland must be paid the NMW or NLW rate. From April 2021, the National Living Wage (NLW) will be the statutory minimum wage for workers aged 23 and over.

A trend analysis of the standard minimum wage rates is below. The age categories changed in 2021, following the reduction in the NLW threshold from 25 to 23, hence the break in this series as shown on the chart below. This also affects the historic 21-24 age data which applies until 2020, but from 2021 represents the 21-22 year age group only (note this is shown on one trend line to preserve the series).



The age-based national minimum wage for the 20 and under age group remains significantly below the current entry and standard grade rates (Grades 1 and 2) under

<sup>10</sup> This is the minimum hourly rate before tax and national insurance deductions.

the agricultural wages pay structure. For workers over the age of 21 at the standard grades the NMW is higher at £8.36 (compared with £7.49 and £6.95 for Standard and Entry Grades under the AWB) and the National Living Wage applicable from age 23 (from 2021, lowered from age 25 in previous years) is higher again at £8.91. The overall trend shows increases across all rates. NMW and NLW rates are increasing at a greater rate than the AWB rates, which, if continued could reduce any adverse impact on workers, particularly younger workers. The gap between the AWB and NMW rates for ages 18-20 is closing, but the NMW rate remains 39p below the AWB rate at present. The National Living Wage shows the steepest rises.

The impact of these rates would therefore depend on a number of factors such as age, current grade, whether a contract applies and how employers choose to implement pay rates in future. The rates above relate to the minimums applicable. There is some evidence<sup>11</sup> that the average hourly rate for agricultural workers is currently higher than the minimum required. It is possible that without the higher mandatory and standardised minimums set in the AWB Order, there could be some downward pressure on wage rates, but it is not expected that all workers would default to the minimum and that pay rates will continue to reflect factors such as existing contracts, skills, experience, retention of staff and management responsibilities.

Defra findings<sup>12</sup> suggest that the AWB minimum wages added, on average, 16p to agricultural wages which, applied equally over ten years, would represent a theoretical upper bound of c.£150m in reduced wages in England and Wales if the AWB was abolished. The lower bound was estimated as being zero. A number of reasons were put forward as to why the actual impact was likely to be smaller, however due to the uncertainties around the impact, Defra adopted the 16p per hour wage reduction as the best estimate. It was highlighted that this was at the top end of what might be expected, and the reality would depend on human behaviour, which may be influenced by other factors, such as the need to be competitive with other employers in the area, the availability of labour, the skills required by a particular enterprise and the relationship between a farmer and his workers.

This assessment uses the Defra methodology in the cost/benefit analysis applicable to NI. The AWB 'boost' to wages has been updated from 16p to 20p to reflect 2020 prices and applied equally across the 6,738 workers as at 2019. The theoretical upper bound in the NI context is £35.2m over ten years using this method, with a best estimate of £6.5m and a low estimate of £0. The best estimate has been adopted in relation to the potential impact in NI. It is likely however that there will be a variable impact on workers but it is not possible to accurately determine this from the available data, hence the application of a standard value, equally spread across all workers.

#### Number of workers transferring from AWO pay provisions to NMW pay provisions

If the Agricultural Wages Board and agricultural minimum wage regime were abolished, the AWO terms and conditions would cease to apply for new workers entering employment in agriculture. It is expected at the time of abolition, that existing workers under contract would remain under the terms of the AWO 1977. It is also

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<sup>11</sup> <https://www.nisra.gov.uk/publications/industry-occupation-age-publicprivate-sector-and-skill-level>

<sup>12</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82649/awb-consult-final-ia-20121219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/82649/awb-consult-final-ia-20121219.pdf)

anticipated that pay differentiation by skills and experience will remain to some extent. Over time as new workers enter the industry, their terms and conditions would be determined by the general employment legislation applying to all workers in the UK and the prevailing labour market conditions.

The Defra IA states that the number of workers on new contracts will be determined by the turnover in the agricultural labour market. Almost by definition, all casual staff will leave the industry quite quickly, albeit possibly only temporarily, and new ones entering or casual workers returning will not be subject to the AWO. On this basis it can reasonably be assumed that within a year of abolition, effectively all of the 2,689<sup>13</sup> casual staff in NI will no longer be subject to the AWO. For the remaining permanent staff, Defra makes an assessment using simple assumptions to estimate a turnover rate of 5%<sup>14</sup> which would equate to approximately 202 of 4,049<sup>15</sup> workers annually in NI.

There is some evidence to suggest that the NMW minima would not apply to the majority of paid workers in NI. Based on a survey sample<sup>16</sup> it can be estimated for paid workers that 3% are under 18, 10% are 18-20, 14% are 21-24 and 74% are 25 and over. On this basis, at least 74% would therefore be eligible for the higher National Living Wage, and this is likely to be higher if 23 and 24 year olds were to be extrapolated from the 21-24 age group. Additionally full time and part time workers account for 60% of the paid workforce in NI, while casual workers, who would be more likely to be on the NMW rates, account for around 40%<sup>17</sup>. It is also the case that casual workers are more likely to be involved in less skilled work at the lower AWB grades and, using the age breakdown, only a small proportion would be subject to the minimum rate under the NMW.

### Overtime

Under the provisions of the AWO 1977, the overtime is 1.5 times the hourly rate of pay (for any hours over 39 hrs/week). If the AWB is abolished, this provision would be removed and no overtime rate set. A breakdown of overtime is not calculated separately. However the average weekly hours of full-time paid workers is 39.91<sup>18</sup>, which suggests an average of almost one hour per full time worker, per week, which based on the AWB overtime rates could range from £10.43 per hour at Grade 1 to £16.43 at Grade 6. The average weekly hours are incorporated into the wage calculations. Maintenance of AWB overtime rates is expected where this is covered by an existing contract.

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<sup>13</sup> Agricultural Census 2019 - [Farm Labour Statistics in Northern Ireland from 1981 to 2019](http://www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland) : www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland

<sup>14</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82649/awb-consult-final-ia-20121219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/82649/awb-consult-final-ia-20121219.pdf)

<sup>15</sup> Agricultural Census 2019 - [Farm Labour Statistics in Northern Ireland from 1981 to 2019](http://www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland) : www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland

<sup>16</sup> Hired and Paid Family Labour Survey, DAERA (Policy, Statistics and Economics Division), 2019

<sup>17</sup> Agricultural Census 2019 - [Farm Labour Statistics in Northern Ireland from 1981 to 2019](http://www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland) : www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland

<sup>18</sup> <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Stats%20Review%202019%20final.pdf>

### Accommodation costs

Under the terms of the AWO 1977, the maximum amount deductible for provision of accommodation is £45.00/week. Under NMW this would increase to £58.52/week. No assessment is made of the potential impact as no data is available on the number of agricultural workers provided with accommodation for which a deduction is made.

### Paid Holiday Entitlement

Under the terms of the AWO 1977, agricultural workers are entitled to 5.6 weeks/year (28 days for a worker working 5 days a week) plus one additional day for workers employed for over a year. Under the Working Time Regulations, this would equate to 5.6 weeks/year (28 days for a worker working 5 days a week). Subject to the terms of any employment contract in place, agricultural workers continuously employed for over one year, could experience a reduction in leave of one day, should their employer choose to apply the minimum. New entrants would be subject to the entitlement under WTR. Temporary and casual workers would be unaffected as they are unlikely to have met the qualifying criteria of one year's continuous service. Employers would receive more labour under the revised arrangements than they would otherwise have done under the AWO. However the extent to which farmers will offer new workers less favourable employment terms than under AWO is unknown. No separate cost is provided with regard to paid holiday entitlement as this is encompassed within the wage calculations.

### Entitlement to sick leave and pay

Under the terms of the AWO 1977, an agricultural worker who has been continuously employed by the same employer for 52 weeks, after being off sick for 4 or more days, would be paid a maximum of 60 days in a rolling 12 month period or 120 days in a rolling 48 month period at a rate of one tenth of the weekly minimum rate of AWB pay for each day sick, plus Statutory Sick Pay (SSP) at £95.85 per week. Under SSP legislation a worker would be paid after being off sick for 4 or more days, SSP for a maximum of 28 weeks at £95.85 per week. New entrants would be subject to the entitlement under SSP. Temporary and casual workers would be unaffected as they are unlikely to have met the qualifying criteria of one year's continuous service. Employers could experience a reduction in costs and employees a reduction in sick leave entitlement and sick pay, subject to any contractual agreements. No separate cost is provided with regard to paid holiday entitlement as this is encompassed within the wage calculations. The Defra assessment assumes that salaried managers would not receive SSP and would continue to receive their normal pay. If they do receive statutory sick pay, there is a corresponding reduction in their salary, which would result in no impact. No data is held on which to make a similar assessment for Northern Ireland, or in relation to the level of sickness absence for agricultural workers.

### Regulatory burden on employers

There are approximately 3,333 agricultural employers in Northern Ireland, employing at least one hired worker<sup>19</sup>. Currently, agricultural employers need to be aware of the provisions of both the Agricultural Wages Order and the National Minimum Wage legislation, in order to ensure that workers are remunerated under the correct regime.

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<sup>19</sup> DAERA Policy, Economics and Statistics Division, source Agricultural Census 2019.

However, if the AWB were abolished, they would need to be familiar only with the provisions of the NMW regime. No data is held as to how long farmers might spend each year familiarising themselves with the provisions of the Agricultural Wages Order (AWO). DAERA has adopted the DEFRA methodology for this calculation, but assumes a cost to NI farmers of £10.51<sup>20</sup> per hour. On this basis, if each agricultural employer spent an hour each year familiarising themselves with the provisions of the AWO there would be a yearly cost to the industry of £35,030 which would be saved if the AWB were abolished. There should also be a time saving for farmers who currently operate both the agricultural minimum wage and the national minimum wage regimes. However, we do not have any evidence or data on how much time saving that might be, and it will depend on the number of employees and the nature of the farming business.

In the absence of an annual Agricultural Wages Order employers and workers would need to agree terms and conditions on an individual basis. This could be taken to represent a new burden for farming businesses. However, the Agricultural Wages Order sets only minimum terms and conditions and there is some evidence to indicate that a proportion of workers are likely to be paid at above the existing minimums, which would in turn indicate that farmers and workers are already negotiating their own agreement to some extent. Additionally the annual update required in relation to AWB and NMW/NLW annual increases already involves a review of terms to some extent, therefore this potential burden is assumed to have a minimal impact. As above, the breakdown of farm enterprises by size suggests that for many, the number of employees will be small. For those medium and larger farms, the burden could be greater.

### Labour and non-wage costs

The overall labour costs in NI are estimated to be 4% of the total expenses of NI agriculture in 2019 as compared to 13% in the UK in 2018<sup>21</sup>, which is likely to reflect differences in size, employment and the nature of agricultural activities. The proportion of non-wage costs to employers in NI are estimated at 13%<sup>22</sup>. Non-wage costs are additional costs to farmers on top of wage costs (including sickness, maternity and paternity pay, National Insurance contributions and pension contributions). There is likely to be a small benefit to employers overall in terms of a reduction in these costs, where the NMW rates become applicable.

### Public expenditure

Minimal impact on public expenditure is expected in relation to abolition of the Board. The Agricultural Wages Board currently costs c. £23,000<sup>23</sup> per annum to run, excluding enforcement costs (no formal complaints have been received in the preceding three year period). DAERA staff costs (c.£12k) would be retained as the AWB Secretariat would be re-deployed to other duties. A small saving in the region of £11k would therefore be expected. Subject to any future transitional period and arrangements, costs and staffing in relation to enforcement to DAERA would be

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<sup>20</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/ash1997to2015selectedestimates> via DAERA Policy, Statistics and Economics Division

<sup>21</sup> <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Stats%20Review%202019%20final.pdf>

<sup>22</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/indxoflabourcostsperhourilchnonseasonallyadjusted> via DAERA Policy, Statistics and Economics Division

<sup>23</sup> AWB Biennial Report 2018-2019, AWB Secretariat (DAERA)

reduced but additional costs would be incurred by HMRC who enforce the NMW in Northern Ireland with regard to all other sectors, once arrangements are made to extend these provisions/ powers to also cover the agriculture sector.

While abolition is likely to result in a minimal reduction in cost to the tax payer associated with the operation of the Board, abolition would be consistent with the New Decade New Approach agreement 2020 to review of Arms'-Length Bodies with a view to rationalisation.

### Enforcement of the Agricultural Minimum Wage

No costs are estimated for enforcement as no formal complaints have been received in the preceding three years. The estimated cost of enforcement to HMRC on transfer of this responsibility in the Defra assessment is £157,000 per annum, but there is no data included to confirm the cost per case from which an estimate could be made in relation to NI. The NI cost is likely to be significantly less due to the size of sector and the number of complaints. This will be explored further in engagement with HMRC.

## **7. Risks and Assumptions**

In accordance with DfE guidance<sup>24</sup>, this assessment has been prepared to take account of the Impact Assessment (IA) undertaken by Defra<sup>25</sup> in relation to the abolition of the AWB in England and Wales in 2013, as well as the local circumstances in Northern Ireland and the latest available NI data<sup>26</sup>. There are a number of differences in the legislative provisions of the respective AWB regimes in each jurisdiction, in the analysis made and in the available data which are noted within this assessment. The Defra IA highlights that there are a number of areas of risk and uncertainty in the assumptions for the values that underpin the costs and benefits calculations. The costs and benefits in this IA are largely transfers between groups and the extent of these cannot be determined with any great precision, as they largely depend upon the future behaviour of employers and the extent to which they would choose to apply the statutory minimums or maintain the current level of entitlement. Further uncertainty is noted in relation to changes in incomes and making assumptions about what might happen in the future on the basis of past evidence. Similar risks, assumptions and uncertainties apply to the NI context, with an additional potential for uncertainty arising from the differences in the NI and English agricultural sectors and context, as well as the time which has elapsed between the Defra analysis in 2013 and the NI assessment (where the DAERA analysis drawn upon Defra assessment). Primary data sources and assumptions are listed below.

Key assumptions are made that those affected will be affected equally by any changes in market conditions over time. There are also caveats around the data used, which consisted of annual data and median wages, at a particular point in time. In-year variations and the distribution around the median wage cannot therefore be accounted for. This is reflected by the wide range in low/high and best estimates.

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<sup>24</sup> <https://www.economy-ni.gov.uk/articles/regulatory-impact-assessment-ria-guidance>

<sup>25</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82649/wb-consult-final-ia-20121219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/82649/wb-consult-final-ia-20121219.pdf)

<sup>26</sup> Analysis of AWB and NMW pay rates are as per the 2020 rates in place at the time of analysis/preparation. Commentary reflects this analysis as well as the update of these rates as of 1 April 2021. Statistical data primarily dates from 2019/2020 or as otherwise indicated.

The assumptions made are highlighted throughout the document and summarised in the table below.

**Assumptions, risks and uncertainties:**

<b>Assumptions and risks</b>	<b>Value</b>	<b>Source of risk or uncertainty to value.</b>
Number of workers subject to AWO in 2019	Full-time paid - 2,457 Part-time paid - 1,592 Paid casual - 2,689	Point in time estimate for the June Survey which was run as a census in 2019 <sup>27</sup> .
AWB/ NMW/NLW	See rates above	2020 rates used in analysis (2021 reflected in commentary) with 2019 data on numbers of workers as above.
Turnover rate	5%	Defra methodology applied Could be higher or lower, the turnover rate in wider economy is noted by Defra to be 10%.
Casual workers turnover rate	100%	Defra methodology applied Not likely casual workers are employed for more than a year.
Estimated (historic) wage premium ('boost' to wages as a result of the AWB)	A of 20p an hour due	Defra methodology, based on past circumstances, applied, uprated to 2021 value (from 16p to 20p). Defra notes a high level of uncertainty. It is also not known with certainty what will happen in the future.
Time period for erosion of wage premium	10 years	Defra methodology applied. No basis to deduce a profile, chosen on the basis of the length of the appraisal period.
Proportion of non-wage costs for farmers	13%	ONS Annual Survey of Hours and Earnings <sup>28</sup>

<sup>27</sup> June Agricultural Census 2019, - [Farm Labour Statistics in Northern Ireland from 1981 to 2019](http://www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland) :  
www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland

<sup>28</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/ash/e1997to2015selectedestimates>

## **Direct Costs and Benefits to Business (including monetised and non-monetised costs)**

The costs and benefits of Option One are assessed as zero. Maintaining the status quo will not increase costs for employers or workers, from the current position, other than the routine costs to the employer of annual pay rises agreed by the AWB and/ or rises in NMW. This is the default, baseline option.

The costs and benefits of Option Two – Abolition of the AWB, will primarily be monetary costs. Some additional 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 monetised and non-monetised costs and direct costs and benefits are set out in the tables above.

The majority of costs and benefits in the table are transfers from workers to farmers. 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<sup>29</sup>. Annual leave and sick pay costs are included within this figure. The uncertainties, assumptions and risk in relation to these figures are set out above.

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. 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 transitional cost applies in respect of the average annual running costs of the AWB. No cost is included for employers as they are currently operating the dual pay regimes and likely to be involved in contract negotiations/administration to some extent on an annual basis, therefore these are assumed to balance out.

### **Small and Micro Businesses Impact Test**

While the majority of farm businesses would fall under the definition of being small and micro businesses for the purposes of this impact assessment, the proposal involves a deregulatory measure, which will reduce the administrative burden on agriculture businesses. Therefore the impact test (SAMBIT) is not considered necessary.

### **Wider impacts**

It has been highlighted that the AWB rates are used as a benchmark in other related industries, such as food processing and packaging. However no appropriate data is held to quantify the extent and impact of this and, as this issue is outside the intended scope and purpose of the legislation (as per the definition in the AWO 1977), it is not considered within this impact assessment.

The Defra Impact Assessment noted potential supply-side benefits in relation to flexibility in the labour market and potential increased employment with a

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<sup>29</sup> 6,738 paid employees in 2019 - <https://www.daera-ni.gov.uk/publications/farm-labour-statistics-northern-ireland>

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.