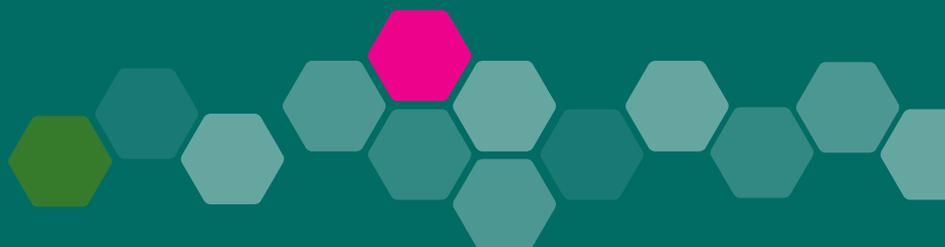




The Scottish
Government
Riaghaltas na h-Alba

A Consultation on the Review of the Role of the Scottish Agricultural Wages Board: Analysis of Consultation Responses



AGRICULTURE, ENVIRONMENT AND MARINE



**A Consultation on the Review of the Role of
the Scottish Agricultural Wages Board:
Analysis of Responses**

**Scottish Government Social Researchers:
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Contents

Contents	i
Summary of analysis	1
Overview	2
Who responded to the consultation	2
Sectors of the industry covered by consultation responses	4
Analysis approach	4
Option A responses	5
1. Positive aspects of the SAWB and the current arrangements.....	6
2. Concerns about the potential for pressure to cut wages if the SAWB is abolished	6
3. Concerns about potential for exploitation of workers with language barriers if the SAWB is abolished	7
4. Repercussions of the abolition of the Wages Board in England	7
5. Concerns about options B and C and lack of evidence supporting these options	7
6. Other issues raised.....	8
Option B responses	9
Option C responses	9
1. Issues relating to employment law	11
2. Impact on effective productive sector	12
3. The SAWB has negative implications for workers.....	14
4. Other issues/comments	16
None of the above (not option A, B or C)	17
Alternative solutions for establishing wage rates and terms and conditions	17
1. Proposals for the remit of the SAWB to be extended and/or changed.....	18
2. Changing how the SAWB rate of pay is set.....	19
3. Proposal to improve the enforcement of SAWB rates	19
4. View that the National Minimum Wage renders other wage controls obsolete	19
5. Proposal that the industry look at the cost of living changes to determine reviewed rates	20
6. Terms and conditions	20
7. Abolish the SAWB and use the money to assist workers.....	20
Annex 1: List of acronyms	21
Annex 2: List of respondents (groups/organisations)	22

Summary of analysis

In total 56 responses were received to this consultation on the role of the Scottish Agricultural Wages Board (SAWB). 13 of these responses (23%) were in favour of retaining the SAWB (option A), while 41 (73%) favoured abolition (option C). Only one of the 56 responses favoured option B, namely to retain the SAWB but as an advisory body, giving the Scottish Government the discretion to fix minimum wage rates and other conditions based on advice given by the SAWB.

Care should be taken in interpreting and using the number of responses. 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 not agree with the submitted response). Broad trends may be applicable, for example employers generally favour removing the SAWB whilst organisations representing workers wish it to be retained. However, we cannot assume that numbers are representative of the industry of a whole.

Respondents favouring the retention of the SAWB tended to emphasise the positive aspects of the SAWB suggesting it is a best practice model of sectoral industrial relations, whilst raising concerns about the potential pressure for employers to cut wages and disadvantage vulnerable, low income workers if the SAWB is abolished.

Respondents favouring the abolition of the SAWB tended to stress the need for market freedom to set wages that enables business growth, the view that agricultural workers are already covered by general employment law and minimum wage rates, and the disadvantages of the SAWB for workers, such as: discriminatory pay treatment; reluctance to hire young workers; lack of public awareness of issues for farm workers; and problems with identification and enforcement of non-compliance by the Gangmasters Licensing Authority and private sector auditors.

Respondents were also asked to advise on an *alternative solution* for establishing wage rates and terms and conditions for agricultural workers in Scotland. The main themes included: proposals for the remit of the SAWB to be extended; changing how the SAWB rate of pay is set; a proposal to improve the enforcement of SAWB rates; a view that the National Minimum Wage renders other wage controls obsolete; a proposal that the industry look at the cost of living changes to determine reviewed rates; recommendations regarding terms and conditions; and several other issues and comments.

Overview

56 responses were received to this consultation on the role of the Scottish Agricultural Wages Board (SAWB). As Table 1, below, shows, 13 of these responses (23%) were in favour of retaining the SAWB with its present statutory powers to set minimum wage rates and other conditions of service which are legally binding on employers (option A), while 41 (73%) favoured abolition (option C).¹ One response favoured option B, namely to retain the SAWB but as an advisory body, giving the Scottish Government the discretion to fix minimum wage rates and other conditions based on advice given by the SAWB. One response favoured none of the three options presented, instead proposing that temporary employees be exempted from the SAWB Order in their first 6 months of employment.

Table 1. Views on alternative mechanisms for establishing pay rates and conditions for agricultural workers in Scotland: summary of responses.

	Option	Number of responses
Option A – Retain the SAWB with its present statutory powers to set minimum wage rates and other conditions of service which are legally binding on employers		13
Option B – Retain the SAWB but as an advisory body, giving the Scottish Government the discretion to fix minimum wage rates and other conditions based on advice given by the SAWB		1
Option C – Remove all existing arrangements for agricultural workers and determine their pay and conditions under general employment law		41
None of the above		1
Total number of responses		56

Who responded to the consultation

Of the 56 responses received, 71% (40 responses) were from employers or their representative bodies. As detailed in Table 2, below, of these 40 responses, 38 (68%) were from employers in agriculture and two were from employers' organisations. Of the 56 responses received overall, 9% were from workers/workers' organisations (5 responses). One response was received from a worker in agriculture and four responses were received from workers' organisations. The remaining 20% of responses were received from other individuals and organisations (11 responses). Six of these responses were received from other organisations while the remaining five were from other individuals (neither workers nor employers).

¹ For clarity, as of at 1 October 2015 the minimum hourly rate for farm workers in the first 26 weeks of employment is £6.70. The minimum hourly rate for workers employed for more than 26 weeks by the same employer is £7.24. The Scottish Living Wage has been set at £7.85 per hour.

Table 2. Summary of responses by respondent type.

Respondent type	Number of responses
Employer in agriculture	38
Worker in agriculture	1
Other (individual)	5
Employer organisation	2
Workers' organisation	4
Other (organisation)	6
Total number of responses	56

As per the Table 3, below, the majority of the responses favouring the abolition of the SAWB (option C) came from employers and employers' organisations (37 responses out of 41), with the remaining four responses for option C coming from one worker and three other organisations. Responses favouring the retention of the SAWB (option A) came from organisations representing workers (4 responses) and other organisations (the Law Society of Scotland, the Scottish Living Wage Campaign, and Sustain: The Alliance for Better Food and Farming). Responses favouring option A were also received from two employers and four other individuals. Only one response favoured option B (retaining the SAWB, but as an advisory body, giving the Scottish Government the discretion to fix minimum wage rates and other conditions based on advice given by the SAWB); this response was received from an individual (neither a worker nor an employer).

Table 3. Summary of responses by option (A, B, C or none of the above) and respondent type.

Option	Employer	Worker	Other (individual)	Employer organisation	Workers' organisation	Other organisation	Total
A	2	0	4	0	4	3	13
B	0	0	1	0	0	0	1
C	34	1	0	3	0	3	41
None	1	0	0	0	0	0	1
Total	36	1	5	3	4	6	56

Sectors of the industry covered by consultation responses

A wide variety of sectors of the agricultural industry were represented in the responses to the consultation. These included soft fruit, arable and mixed arable, horticulture, livestock, potato growers, forestry and estate management – see Table 4, below. The sectors receiving most representation in the consultation responses were soft fruit and arable. 17 responses (31%) were from those involved in the soft fruit sector and 16 responses (29%) were from those involved in the arable sector. These are traditionally the sectors which employ large numbers of seasonal workers. 6 responses (11%) were received from individuals and organisations involved in horticulture.

Table 4. Sectors of the industry covered by consultation responses

Arable	Livestock, forestry
Arable, cattle, timber	Mixed
Arable / horticulture / vegetable	Other – machinery ring
Arable, soft fruit, diversified agri	Potato farmers and growers
Mixed arable, cattle and sheep	Potato, vegetable, cereal and cattle
Beef cattle and horticulture	Retail/horticulture
Beef cattle and sheep	Retired farm manager
Beef, sheep and hill farming	Soft fruit
Estate management – agricultural, forestry, gardening, fishery and gamekeeping staff	Soft fruit / poultry / arable
Forestry	Soft fruit, potatoes, arable
Forestry nursery	Soft fruit, beef and arable
Fruit, vegetables and salads	Soft fruit, arable, poultry, beef
Hardy ornamental stock production	Soft fruit and vegetable
Horticulture	Vegetable, cereal, soft fruit

Analysis approach

This analysis is a qualitative assessment of textual responses to the consultation. The range of opinion both for and against the abolition of the SAWB has been summarised to assist with policy development. The number of respondents favouring options A, B or C 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 not agree with the submitted response). Broad trends may be applicable, for example employers generally favour removing the SAWB whilst organisations representing workers wish it to be retained. However, we cannot assume that numbers are representative of the industry of a whole.

Option A responses

As detailed above, 13 of the responses received (23%) were in favour of retaining the SAWB with its present statutory powers to set minimum wage rates and other conditions of service which are legally binding on employers – option A. As Table 5 sets out below, of these 13 responses four were from organisations representing workers and three were from other organisations (the Law Society of Scotland, the Scottish Living Wage Campaign, and Sustain). Two responses were from employers favouring option A and a further four responses were received from other individuals (neither workers nor employers).

Table 5. Summary of responses favouring Option A, by respondent type.

Respondent Type	Number of responses
Employer	2
Worker	0
Other (individual)	4
Employer organisation	0
Workers' organisation	4
Other (organisation)	3
Total	13

Main themes emerging from the responses favouring Option A:

1. Positive aspects of the SAWB and the current arrangements
2. Concerns about the potential for pressure to cut wages if the SAWB is abolished
3. Concerns about potential for exploitation of workers with language barriers if the SAWB is abolished
4. Repercussions of the abolition of the Wages Board in England
5. Concerns about alternative options (options B and C) and lack of evidence supporting these options
6. Other issues

1. Positive aspects of the SAWB and the current arrangements

Responses favouring the retention of the SAWB tended to emphasise the positive aspects of the Wages Board and the current set up. For instance, it was noted that the SAWB has specialist expertise above and beyond general employment law, that the Board sets a baseline from which it is possible to compare wages across the industry, for the fairness of all, and that it helps to ensure that staff are not underpaid by any one employer.

Both the Equalities Law Sub-Committee of the Law Society of Scotland and Unite the Union noted that the SAWB constitutes a sectoral and uniform model of best practice in industrial relations, while the Scottish Trades Union Congress (STUC) pointed to the importance of collective bargaining in what it referred to as a “low wage industry where seasonal employment is so prevalent”.

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) contended that the SAWB provides “a mechanism which at least gives workers some possibility to address the severe socio-economic and cultural disadvantage, inequitable labour relationships and distribution of benefits that are the characteristics of the agricultural sector in too many countries”, as well as to address power imbalances between rural workers and employers. Additionally, the IUF argued that the existence of the SAWB ensures that there is a negotiating system in place in the agricultural sector which allows the UK’s obligations under International Labour Organisation and other conventions to be met, for example relating to freedom of association, collective bargaining, equality, forced labour and child labour.

With regard to pay rates and conditions, the STUC pointed to the fact that the provisions within the annual Agricultural Wages (Scotland) Orders outlining agreed changes to rates of pay and terms and conditions ensure the most vulnerable will not be exploited by employers. It was also noted that existing arrangements afford workers who are covered by the SAWB additional provisions in terms of a higher rate of pay (including a higher minimum rate for overtime), no age related pay differentials, the option of a stable income arrangement, paid sick leave, additional bereavement leave, and pay for standby duty. The Scottish Living Wage Campaign was strongly supportive of the SAWB’s role in ensuring that workers receive a rate of pay higher than the National Minimum Wage. There was also a view that maintaining the current role of the SAWB was in line with the Scottish Government’s stated commitment to end poverty and support the Living Wage.

2. Concerns about the potential for pressure to cut wages if the SAWB is abolished

Concerns were expressed that abolishing the SAWB, or changing its role to one of an advisory body, would lead to a ‘race to the bottom’ in terms of pay and conditions.

3. Concerns about potential for exploitation of workers with language barriers if the SAWB is abolished

Both Unite the Union Scotland and the Scottish Living Wage Campaign expressed concerns that abolishing the SAWB or changing its remit would impact negatively on migrant workers. In its response to the consultation, Unite contended that given the significant proportion of so-called A8 migrants in the Scottish rural and agricultural workforces (migrants from eight countries from the former 'Eastern Bloc' that joined the EU on 1 May 2004, namely the Czech Republic, Slovakia, Poland, Hungary, Slovenia, Estonia, Latvia and Lithuania), abolishing the SAWB or changing its role to that of an advisory body would have a "direct and detrimental impact on race equality and endanger migrant workers disproportionately". The Scottish Living Wage Campaign expressed its concern that the removal or reduction of the SAWB would leave workers who are already vulnerable at the mercy of employers without an additional level of protection, particularly workers with language barriers who "are unfamiliar with UK/Scottish working regulations and procedures, are isolated within the community due to the nature of the work and are often indebted to agencies/traffickers".

4. Repercussions of the abolition of the Wages Board in England

Unite the Union Scotland, the STUC, the Law Society of Scotland and the Scottish Living Wage Campaign all pointed to the abolition of the Agricultural Wages Board in England in 2013. Both Unite and the STUC stressed the impact that the abolition of the AWB has had on wages and other terms and conditions in the agricultural sector in England, with Unite contending that there has been "downward pressure and growing exploitation" as a consequence. It was noted that in Northern Ireland the AWB was retained following a consultation by the NI Assembly in September 2012, while in July 2014 a decision by the UK Supreme Court upheld the move by the Welsh Government to set up its own version of the AWB. The Scottish Living Wage Campaign recommended that the Scottish Government "look to the example of the Welsh and Northern Irish Assemblies in retaining their Agricultural Wages Boards rather than following the UK Government in retracting workers' rights and conditions, and deregulating the sector".

5. Concerns about options B and C and lack of evidence supporting these options

Concerns were expressed by respondents favouring the retention of the SAWB about the potential impact of abolishing the SAWB or changing its role to that of an advisory body. For instance, there were concerns that either of these options would lead to increased non-compliance with Scottish Government Orders, would facilitate inequality and would lead to a less safe working environment in the industry. Unite's view was that an advisory body did not and could not be a substitute for a statutory body, while the STUC argued that abolishing the SAWB would be contrary to the Scottish Government's stated policy position and the recommendations of the Working Together Review and would undermine the work

of the Fair Work Convention. The IUF stated that weakening the SAWB “can only be interpreted as a dismantling of agricultural workers’ rights”.

Countering the arguments made by others in favour of the abolition of the SAWB, for example that there is no reason for agricultural workers to be treated differently to other workers, Unite noted that unlike other sizable groups who can enter into collective bargaining agreements on a workplace or individual company basis, farm workers cannot in the majority of cases meet the threshold for statutory trade union recognition rights. There was strong opposition to the view expressed by some of the respondents in favour of abolishing the SAWB that the SAWB’s role is obsolete given National Minimum Wage and Working Time Regulations. Unite argued that these do not encompass the minimum standards within the SAWB process to effectively regulate a low density, geographically disparate and isolated industry, while the STUC noted that the National Minimum Wage and Working Time Regulations are subject to little or no pro-active enforcement.

Reference was also made to the lack of evidence justifying the abolition of the SAWB or the changing of its status to an advisory body. In its response to the consultation, the Law Society of Scotland’s Equalities Law Sub-Committee noted that it had found no evidence to suggest that abolishing or restricting the SAWB would result in enhanced employment conditions for workers in Scotland. The Committee pointed to the fact that wage setting has been in place in various forms in Scottish agriculture since 1917 and reflects the norm across the European Union, and expressed its support for the retention of the SAWB. Additionally, the STUC noted that circumstances in the agricultural sector have not changed to any great extent since the 2008 review when the decision was made to retain the SAWB, and that there remains the potential for low pay and poor terms and conditions across the sector.

6. Other issues raised

- It was noted that the SAWB improves the dynamics of farming management in Scotland (between farmers, the SAWB and the Scottish Government).
- It was noted that the protection of agricultural wages is crucial for creating a more sustainable food and farming system.
- It was noted that some employers pay above the rates of the SAWB but use the SAWB agreed percentage increase to increase their wage rates.
- Unite noted that the Agricultural Wage Boards play a role in setting pay far more widely than for the workers formally included in their scope.
- One respondent contended that there is no conflict within Scottish agriculture regarding wages as both employers and employed respect the wages negotiated by this method.
- In relation to the low number of responses received from agricultural workers’ and workers’ organisations to the 2008/9 consultation, Unite suggested this may have been due to isolation. As such, Unite urged that “the case for

retention should not be based on the numerical numbers of the response for or against the retention of the SAWB, but on the merits of the case”.

Option B responses

As detailed in Table 6, below, just one of the responses received was in favour of retaining the SAWB but as an advisory body, giving the Scottish Government the discretion to fix minimum wage rates and other conditions based on advice given by the SAWB.

Table 6. Summary of responses favouring Option B, by respondent type.

Respondent Type	Number of responses
Employer	0
Worker	0
Other (individual)	1
Employer organisation	0
Workers' organisation	0
Other (organisation)	0
Total	1

The respondent favouring option B suggested that the SAWB could provide useful advice on issues unique to agricultural workers such as living conditions and working with animals. They proposed that all workers across Scotland should be paid at least the Living Wage, as opposed to having different tiers of payment.

Option C responses

As detailed in Table 7, below, 41 of the responses received (73%) were in favour of removing all existing arrangements for agricultural workers and determining their pay conditions under general employment law – option C. Of these 41 responses, 34 were from employers and three were from organisations representing employers (the National Farmers' Union of Scotland, NFUS, and 50 Club Horticultural Employers' Association). Three responses were received from other organisations, while one response was received from an individual worker.

Table 7. Summary of responses favouring Option C, by respondent type.

Respondent Type	Number of responses
Employer	34
Worker	1
Other (individual)	0
Employer organisation	3
Workers' organisation	0
Other (organisation)	3
Total	41

Main themes emerging from the responses favouring Option C

1. Issues relating to employment law

- There is no need for the Agricultural Wages Board given general employment law and no justification for agricultural workers to be treated differently to other workers.
- Significant changes in the marketplace mean that farms are regularly checked for compliance with employment legislation.

2. Impact on effective productive sector

- Concern about costs of production being higher in Scotland than in England due to the SAWB.
- The SAWB causes confusion – abolishing it would reduce bureaucracy and help to create a business environment that encourages investment in business growth.
- Abolishing the SAWB would create flexibility.

3. Negative implications of the SAWB for workers

- Concern that the SAWB deters employers from hiring young workers.
- SAWB provisions often have adverse effects on workers.
- The Agricultural Wages Order can lead to discriminatory pay treatment.
- Abolishing the SAWB would lead to a greater awareness and appreciation of the employment rights of farm-workers.
- Abolishing the SAWB would simplify identification and enforcement of non-compliance by the Gangmasters Licensing Authority and private sector auditors.

4. Other issues/comments

1. Issues relating to employment law

- **There is no need for the Agricultural Wages Board given general employment law and no justification for agricultural workers to be treated differently to other workers.**

Responses favouring the abolition of the Scottish Agricultural Wages Board tended to note that since the establishment of the SAWB much has changed in terms of legislation to protect workers in farming and horticulture. Respondents pointed, for example, to the National Minimum Wage (to become the National Minimum Living Wage), the EU Working Time Directive, the Gangmaster Licensing Act (which specifically applies to agriculture), statutory requirements covering sick pay, maternity leave and workplace pensions, and Health and Safety legislation. Respondents argued that these developments make the SAWB unnecessary and that given the many mechanisms to set minimum standards for employment which now exist, “special provision for agriculture is an anachronism” and a “waste of time and money”. One respondent asked if “we really need a bunch of industry reps cutting deals in smoke filled rooms in this day and age, when we have a fully functional and diverse employment marketplace”.

The NFUS contended that the Wages Order has little effect on many of the individuals that it purports to protect, given that many agricultural workers are paid well above the minimum rates. The Confederation of Forest Industries (Confor) similarly noted its view that forestry workers are generally well paid and that their working conditions are carefully regulated through certified procedures and the Forest Industry Safety Accord (FISA). Confor also argued that the SAWB is no longer needed, given that the forestry workers covered by SAWB orders are now adequately covered by general employment law.

Those favouring the abolition of the SAWB argued that there was no reason for Scottish agriculture to be treated differently to other industries, and for agricultural workers to be treated different to other workers. For instance, the Association of Labour Providers (ALP) stressed that there was “no logical justification for maintaining this special arrangement for one sector”. As one respondent put it: “Other sectors of industry can manage to get by without quangos – I can’t really see why agriculture should be any different”.

There was a view that it was “no longer necessary or justifiable to maintain a separate system of pay control for agricultural workers”. It was argued that there was no reason for agriculture to be different from other labour intensive industries, and for higher/stricter rules and rates to be enforced. ALP stressed that in other sectors that are characterised by low pay and long hours, such as office cleaning, catering and hospitality, workers are entitled to only the minimum wage. Respondents suggested that it was not possible to justify a minimum

wage for unskilled agricultural workers that was higher than the minimum wage for workers in other industries.

- **Significant changes in the marketplace mean that farms are regularly checked for compliance with employment legislation.**

NFUS noted that Farm Assurance schemes, including those operated by retailers, regularly check that farms are compliant with employment legislation, and that in most cases the requirements go beyond statutory minimums.

2. Impact on effective productive sector

- **Concern about costs of production being higher in Scotland than in England due to the SAWB, putting business at a competitive disadvantage.**

Concerns were expressed, particularly by those from the soft fruit sector, that the existence of the SAWB meant that Scottish businesses were operating at a competitive disadvantage, and that this was not good for Scottish agricultural sustainability, especially given the abolition of the Wages Board in England. NFUS also pointed to the “additional burdens on Scottish agricultural businesses enforced by the Wages Order”, including “the direct costs associated with enhanced holiday allowance, sick leave provision, and standby duty”.

It was noted that a Board with the ability to set higher and different rates in Scotland compared to other parts of the United Kingdom puts Scottish producers and employees at a considerable financial and administrative disadvantage compared to others in the UK who are supplying the same markets. NFUS noted that this was particularly keenly felt in the field vegetable and soft fruit industries, which employ substantial numbers of seasonal agricultural workers and which compete directly with farm businesses in England. As one respondent put it: “With 90% of Scottish soft fruit going to England, the soft fruit sector in Scotland is at a considerable disadvantage to its English competitors with different rates and terms and conditions”. Another respondent noted that the SAWB had cost their business £100,000 more than it would have if they worked in England.

The NFUS expressed concern about the impact of proposals relating to the new National Minimum Living Wage, should the SAWB remain in place – particularly the potential for competitors in England to employ workers under the age of 25 at lower rates of pay, meaning “that Scottish businesses will be at even more of a disadvantage”. Related to this, several respondents from the soft fruit sector expressed concern about the future viability of their business once the Living Wage comes into force because of how much of their costs go on wages. For instance, one respondent reported that a full fifty per cent of their costs go towards wages. Respondents also argued that since the abolition of the

Agricultural Wages Board in England, the SAWB has effectively worked against the interests of workers in Scotland's soft fruit industry, reducing their incomes by making overtime working unaffordable to employers and discouraging the employment of young workers. NFUS likewise noted that as a result of the restrictions applied by the Wages Order, its members in the field vegetable and soft fruit sectors have been forced to change their employment practices to remain competitive.

It was also argued that the Scottish Government idea of being a 'Good Food Nation' "is being severely hampered and our competitors are being given a leg up by having a much simpler framework to adhere to". In relation to the soft fruit sector in particular, one respondent warned that: "If Scotland lost the fruit industry it would be a huge blow to the economy, and that is what is at stake".

- **The SAWB causes confusion – abolishing it would reduce bureaucracy and help to create a business environment that encourages investment in business growth.**

Many of the respondents who favoured the abolition of the SAWB argued that the Board causes confusion. For instance, ALP stressed that agricultural work is not easy to define and that it is difficult to determine who is and who is not covered by SAWB orders. Another respondent contended that the maintenance of two separate systems for the control of low pay – the minimum or living wage and the Agricultural Wages Order – "causes confusion, duplication and unnecessary additional cost for both employers and government". The 50 Club Horticultural Employers' Association similarly noted that the SAWB "adds confusion for both workers and employers, duplicating regulation and creating an unnecessary administrative burden, thus hindering business development". Another respondent suggested that it was "unclear how horticulture fits into this framework".

Additionally, NFUS noted that having to comply with both UK employment legislation and the requirements of the Wages Order adds to red tape – especially for businesses which also employ non-agricultural workers. Confor likewise noted that SAWB orders sometimes differ slightly from general employment rules and that this can give rise to confusion. Another respondent maintained that it is difficult to get independent advice on applying the order – for instance, in relation to creating employment contracts – since the agricultural wages order is specific not only to agriculture but also to Scotland.

It was argued that the double layer of legislation created by the SAWB adds complexity to the operation of agricultural businesses, making them less efficient. ALP noted that the SAWB is particularly confusing when the same workers may be subject to SAWB orders and general employment law in the same working period or when working in the same place. It was proposed that removing the SAWB would reduce bureaucracy, particularly for businesses that run two wage systems under both the SAWB and National Minimum Wage legislation, for

example businesses that have diversified to include a retail element. ALP noted its view that: “It would be a welcome simplification of a complex regulatory regime to have a single set of minimum wage rules for all workers”. It was also argued that removing the SAWB and determining agricultural (including horticultural) workers’ pay and conditions under general employment law would help create a business environment that encourages investment in business growth.

Beyond this, ALP noted that differences in view between administrations with regard to cross border working creates confusion for labour providers working across the UK.

- **Abolishing the SAWB would create flexibility.**

It was argued that the SAWB has reduced flexibility of working practice. It was noted that removing all existing arrangements for agricultural workers and determining their pay and conditions under general employment law would allow more flexibility into the system, making it easier to have a rolling workforce when supplying large retailer and supermarket orders. It was also noted that abolishing the SAWB would help to create further flexibility to increase staff hours at times of increased demand. One respondent pointed to the potential for a shift from waged to salaried labour which, it was argued, would improve staff morale. Another respondent advised the Scottish Government to “leave the labour market alone, unless there are issues with food security.”

It was also noted that the industry needs both skilled and unskilled labour “with maximum flexibility to encourage the unskilled to become skilled”, and that the removal of the SAWB would help to create this flexibility.

3. The SAWB has negative implications for workers

- **Concern that the SAWB deters employers from hiring young workers**

Those who favoured the abolition of the SAWB tended to argue that the SAWB is, in the words of one respondent, “a massive deterrent to employment of young workers”. Both NFUS and the 50 Club Horticultural Employers’ Association argued that the omission from the Wages Order of the provisions in the National Minimum Wage concerning the age of employees acts as a disincentive to employing young workers. According to the 50 Club Horticultural Employers’ Association, if the SAWB is retained “this could be further complicated by the age related basis of setting the Living Wage”.

The NFUS noted that: “Young workers are less experienced, must be supervised more closely and in many cases cannot perform tasks that older workers can – yet the Wages Order requires that they should be paid the same”. Other

respondents similarly pointed out that there is little incentive to employ a young local person as the employer has to pay them at the full rate from the start; if the young employees are much slower than their older and more experienced colleagues, employers cannot afford to keep them on as they have to pay them the full minimum wage. Thus there was concern about 16 and 17 year olds' chances of getting and keeping a job in agriculture when employers expect them to work as productively as staff aged 25 and older. Additionally, in the horticulture sector it was noted that the SAWB wage structure discourages the recruitment of young people due to the lack of age-related pay bands.

It was argued that agriculture needs to attract more young people and that all restrictions and impediments to their easy employment, including the SAWB, "should be abolished".

- **SAWB provisions often have adverse effects on workers.**

It was argued that where SAWB has had special provisions, they have usually had adverse effects on workers. For instance, ALP pointed to the requirement that overtime be paid after eight hours a day and 39 hours a week with an overtime rate 50% higher than the basic rate, arguing that many agricultural businesses cannot afford to pay these overtime rates. As a result, such businesses stipulate that workers can work no more than eight hours a day and 39 hours a week, which means that agricultural workers are denied the opportunity of working longer hours and earning more money. ALP noted that "in reality this gives further encouragement to the 'informal economy', as if workers want to work 60 hours a week they will do so".

ALP also underlined that the differences between SAWB order terms and general employment law create other problems. For instance, it noted that the accommodation offset arrangements are different between the two regimes in different ways, that agricultural holiday pay arrangements require special calculations which many payroll systems cannot deal with, and that agricultural sick pay arrangements are complex.

- **The Agricultural Wages Order can lead to discriminatory pay treatment.**

One respondent argued that the existence of the SAWB and the Agricultural Wages Order (AWO) creates difficulties for diversified enterprises that comprise both agricultural and non-agricultural activities, and that in such situations the AWO can lead to discriminatory pay treatment within a single enterprise between workers who may have comparable skill and experience levels. It was noted that such discrimination can demotivate staff and militate against good team working. The respondent also pointed to the difficulties where workers perform both agricultural and non-agricultural duties, which in their experience is a common situation.

- **Abolishing the SAWB would lead to a greater awareness and appreciation of the employment rights of farm workers.**

The 50 Club Horticultural Employers' Association argued that aligning agriculture with other sectors by abolishing the SAWB would mean that farm workers and businesses would have recourse to a wide range of advisory resources from organisations such as the Advice, Conciliation and Arbitration Service (ACAS) and Citizens Advice Scotland, as well as more informal channels, such as word-of-mouth from friends and associates working in other industries. In its view, this should lead to a greater awareness and appreciation of the employment rights of farm workers.

- **Abolishing the SAWB would simplify identification and enforcement of non-compliance by the Gangmasters Licensing Authority and private sector auditors.**

ALP noted that the practical experience of labour providers is that enforcement of the SAWB orders “is virtually non-existent outside the sector regulated by the Gangmasters Licensing Authority”. The 50 Club Horticultural Employers' Association argued that aligning agriculture with other sectors by abolishing the SAWB would simplify identification and enforcement of non-compliance by the Gangmasters Licensing Authority and private sector auditors. ALP also noted that abolishing the SAWB would mean that labour providers were no longer at a competitive disadvantage compared with non-regulated agricultural businesses “which are more able to conceal cash payments”.

4. Other issues/comments

- One respondent questioned whether the agricultural wages order was being applied “fairly, consistently and correctly” by Scottish Government officials.
- One respondent pointed out that the information on the consultation document was wrong and that overtime was £9.75, not £7.14 as per the consultation document. The respondent noted that “seasonal crops and erratic supermarket orders require overtime peaks”.

None of the above (not option A, B or C)

Table 8. Responses favouring none of the available options (A, B or C), by respondent type.

Respondent Type	Number of responses
Employer	1
Worker	0
Other (individual)	0
Employer organisation	0
Workers' organisation	0
Other (organisation)	0
Total	1

This respondent did not explain why they favoured neither option A, B nor C.

Alternative solutions for establishing wage rates and terms and conditions

Responses to the question asking respondents to advise on an alternative solution for establishing wage rates and terms and conditions for agricultural workers in Scotland.

Main themes emerging from the responses:

1. Proposals for the remit of the SAWB to be extended and/or changed
2. Changing how the SAWB rate of pay is set
3. Proposal to improve the enforcement of SAWB rates
4. View that the National Minimum Wage renders other wage controls obsolete
5. Proposal that the industry look at the cost of living changes to determine reviewed rates
6. Terms and conditions
7. Abolish the SAWB and use the money to assist workers

1. Proposals for the remit of the SAWB to be extended and/or changed

Unite the Union Scotland proposed that in the future any 'period review' should consider the extension of the remit of the SAWB. A number of proposals were put forward by a variety of respondents for extending the SAWB's remit. For instance, it was proposed that the coverage of the SAWB be extended to agriculture and horticulture-related workers who are currently excluded from its remit (e.g. some estate workers and private gardeners, and some packing station workers). Sustain proposed that the SAWB's remit could be extended to include improving the enforcement of SAWB rates, and more effective ways to deal with employers exploiting workers in the agricultural sector.

The STUC pointed to opportunities for an enhanced SAWB "to provide a framework for industry wide engagement between employers that uses the skills of trade union health and safety, environmental, equality and learning representatives to deliver a fairer, greener, more equal and highly skilled workforce". It proposed that an enhanced SAWB could take forward the recommendations of the Working Together Review and suggested that the SAWB could be given additional powers to develop strategies to meet the individual recommendations within the 'Developing Capacity and Capability in Industrial Relations' theme. For instance, it argued that "a reformed board could investigate how trade union equality reps could address issues associated with this sector that has high levels of migrant labour with potential for exploitation". The STUC also suggested that the SAWB "consider how effective workplace representation could be developed in conjunction with Unite" within the 'Supporting Fair Employment' theme. It was proposed that the SAWB could also revisit the concept of 'Roving Safety Representatives' and extend this to include union equality, environmental and learning representatives.

The STUC maintained that increasing the SAWB's responsibilities could make it a mechanism for trade unions and employers to develop innovative approaches to industrial relations in the sector. It proposed that "a refreshed collective bargaining model should be developed for the SAWB to better reflect the needs of the sector and to take into consideration the wider fair work agenda promoted by the government".

Additionally, one respondent suggested that temporary employees be exempted from the SAWB Order in their first 6 months of employment. Another respondent proposed that ornamental horticulture be exempted from the remit of the SAWB, given that ornamental horticulture was not intended to be covered under the original Agricultural Wages (Scotland) Act 1949.

2. Changing how the SAWB rate of pay is set

The Scottish Living Wage Campaign recommended that the SAWB rate of pay be set in relation to the actual costs of living, in a way similar to the Living Wage as set by the UK Living Wage Foundation.

The 50 Club Horticultural Employers' Association pointed out that there are a number of labour market indicators that can be used to establish wage rates and terms and conditions, including setting out the annual percentage increases under the National Minimum and Living Wages; cost of living increases (e.g. based on CPI); average weekly earnings figures; and farm business profitability. The group noted that it would be willing to circulate such indicators to their members on an annual basis.

3. Proposal to improve the enforcement of SAWB rates

Unite proposed that measures should be considered to improve the enforcement of SAWB rates and to effectively tackle rogue employers operating and exploiting workers in the agricultural sector.

However, another respondent noted that the Ethical Trading Initiative (ETI), which all UK supermarkets have signed up to, already enforces regulation that is a higher standard than law (e.g. in relation to pay for overtime).

4. View that the National Minimum Wage renders other wage controls obsolete

It was argued that the National Minimum Wage and proposed Living Wage render any other wage controls obsolete. NFUS noted its view that the National Minimum Wage is the appropriate safety net for all workers. It was suggested that the new Living Wage would also raise the skilled rates of pay, as both employees and employers would be keen to keep a gap.

One respondent proposed that the AWB and AWO be phased out with one year's notice and replaced by the Minimum Wage, "or preferably the minimum wage together with other existing employment regulations of general application, such as those covering minimum holiday entitlement". It was suggested that the implementing legislation would protect the pay of existing agricultural workers from any reduction in their wage rates and related compensation.

Additionally, it was proposed that Scotland use the same rates and terms and conditions as set by the UK government for England and Wales.

5. Proposal that the industry look at the cost of living changes to determine reviewed rates

It was proposed that, in addition to the publication of the annual National Minimum Wage changes, the industry could look at the cost of living changes, the labour market and comparative industries and farm business conditions to determine reviewed rates.

6. Terms and conditions

With regard to terms and conditions, one respondent proposed that for the accommodation charge, the rate set nationally could be used. In relation to sick pay, it was suggested that this piece of legislation “could be kept purely for agricultural workers as it is, or it could be abolished and the national terms for other employees could be followed”. In relation to an additional sum for employees with qualifications, the respondent could not “think of anyone who would not pay an employee with appropriate skills more anyway”.

Additionally, it was proposed that dog allowances be incorporated into tax regulations in the same way as maximum mileage reimbursement rates.²

7. Abolish the SAWB and use the money to assist workers

One respondent proposed that the SAWB be abolished and its funding used “to sort out the dark areas of our supply chain that disadvantage small and medium-sized enterprises (SMEs) and family businesses, keeping them in the pocket of the retailers paying artificially low costs of production and withholding payment until long after produce is sold and consumed, effectively providing 0% finance to the multinationals (who have no wage boards to answer to)”. It was suggested that using the SAWB’s funding in this way would give SMEs “the confidence to grow, flourish and expand”, leading to wage rises and employment opportunities.

Another respondent proposed that the SAWB be removed and funding extended for agricultural apprenticeships to the over 19 age group.

² The dog allowance is payable when it is necessary for a worker to keep and feed a dog or dogs as part of their duties.

Annex 1: List of acronyms

ACAS	Advice, Conciliation and Arbitration Service
ALP	Association of Labour Providers
AWB	Agricultural Wages Board
AWO	Agricultural Wages Order
CONFOR	Confederation of Forest Industries
CPI	Consumer Price Index
ETI	Ethical Trading Initiative
EU	European Union
FISA	Forest Industry Safety Accord
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
NFUS	National Farmers Union of Scotland
NI	Northern Ireland
RESAS	Rural and Environment Science and Analytical Services Division
SAWB	Scottish Agricultural Wages Board
SME	Small and medium-sized enterprise
STUC	Scottish Trades Union Congress
UK	United Kingdom

Annex 2: List of respondents (groups/ organisations)

50 Club Horticultural Employers' Association

AF Murray & Co, Unthank Potato Stores

Alba Trees PLC

Allan W. Clarke & Sons

Angus Growers Ltd.

Association of Labour Providers (ALP)

Castleton Fruit Ltd.

Confederation of Forest Industries (Confor)

Geoffrey Bruce Ltd.

Harold Corrigall, Leadketty Farm

Horticulture Trade Association

International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers Association (IUF)

Law Society of Scotland

Messrs David McIntyre, Cruachan

National Farmers Union of Scotland (NFUS)

Ringlink Scotland

R. & N. Cessford, Whanland Farm

Scottish Living Wage Campaign

Scottish Trades Union Congress (STUC)

Sustain: The Alliance for Better Food and Farming

Unite Highland Retired Members Branch

Unite the Union (Scotland)

W. & R. Logan Ltd

How to access background or source data

The data collected for this social research publication:

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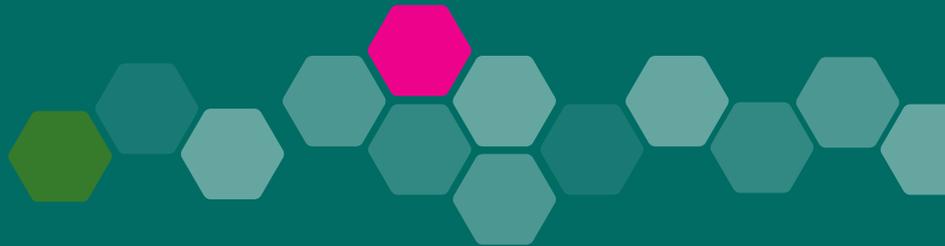
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