

EXPLANATORY MEMORANDUM TO
THE WORKING TIME (AMENDMENT) (ENGLAND) REGULATIONS 2013
2013 No. 2228

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument aligns the position for workers employed in agriculture in England with the position for workers in most other sectors under the Working Time Regulations 1998 (S.I. 1998/1833) (“the 1998 Regulations”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations provide for amendments to provisions in the 1998 Regulations relating to the administration of annual leave in their application to workers employed in agriculture in England. They are made as a consequence of the referral to the Supreme Court of the question as to the legislative competence of the Agricultural Sector (Wales) Bill by the Attorney General on 13th August (see paragraph 4.3 below). These Regulations need to come into force on 1st October 2013 (as further explained in paragraph 4.9). Therefore, they are made under section 2(2) of the European Communities Act 1972 (c. 68).

3.2 Were it not for the timing constraints, these Regulations would have been made under powers conferred by section 13(1), (2)(c), (3) and (6) of the Work and Families Act 2006 (c. 18) (“the 2006 Act”) like the affirmative resolution procedure Working Time (Amendment) Regulations 2013 laid in draft (and already approved by the House of Lords) which Defra has applied to withdraw. For a detailed explanation of the rationale for this application for withdrawal, please see paragraphs 4.2 to 4.9. Under the section 13 powers in the 2006 Act it would not be possible for the Regulations to come into force on 1st October 2013 because in accordance with section 13(7) of that Act a draft of the Regulations would need to have been laid before, and approved by a resolution of, each House of Parliament before being made.

4. Legislative Context

4.1 In 2010 the Government announced that it proposed to bring forward legislation to end the separate employment regime for agricultural workers in England and Wales. Following Royal Assent to the Enterprise and Regulatory Reform Act 2013 (c. 24), the

Enterprise and Regulatory Reform Act 2013 (Commencement No 1, Transitional Provisions and Savings) Order 2013 (S.I. 2013/1455 (C. 55)) abolished the Agricultural Wages Board for England and Wales on 25th June 2013 and made savings for the Agricultural Wages Order (England and Wales) 2012 to remain in force until 1st October 2013, when the National Minimum Wage would apply to agricultural workers in England and Wales.

4.2 As a concluding part of the implementation of a single employment regime, the Government laid before Parliament on 20th June draft Regulations to amend the 1998 Regulations to align the position for workers employed in agriculture in England and Wales from 1st October 2013 with the position for workers in most other sectors under the 1998 Regulations. These draft amending Regulations, subject to the affirmative resolution procedure, were debated in the House of Lords on 22nd July and a motion to approve them was agreed on 30th July.

4.3 On 17th July, the National Assembly for Wales passed the Agricultural Sector (Wales) Bill which would have the effect of providing for a separate agricultural minimum wage for Wales. In accordance with the procedure under section 112(1) of the Government of Wales Act 2006, the Attorney General has subsequently referred to the Supreme Court the question of whether the Agricultural Sector (Wales) Bill is within the Assembly's legislative competence. Pending the Court's judgment the Government has decided to continue the agricultural minimum wages regime in Wales in order to provide certainty for agricultural workers and employers in Wales.

4.4 Therefore the Government has determined to withdraw the draft amendments to the 1998 Regulations laid before Parliament on 20th June in respect of workers in England and Wales and lay new amendments in respect of workers in England only.

4.5 Agricultural workers are already protected by the 1998 Regulations but there are certain provisions in those Regulations which are specific to them. These are in relation to the date of the commencement of the leave year and leave notices. These technical amendments to the 1998 Regulations are a consequence of the move to a single employment regime.

4.6 Currently, the 1998 Regulations provide that for workers other than those wholly employed in agriculture, the leave year begins on the date provided for in a relevant agreement (regulation 13). Where there is no provision in a relevant agreement and employment began on or before 1st October 1998, the date is 1st October. Where employment commenced after 1st October 1998, the leave year begins on the date or anniversary of the date of commencement of employment. Under article 45 of the Agricultural Wages (England and Wales) Order 2012, the leave year for all agricultural workers begins on 1st October.

4.7 The 1998 Regulations also set out a system for workers and employers to give notice about taking leave (regulation 15), which again does not currently apply to workers wholly employed in agriculture. In essence, these provisions require a worker to notify an

employer of the intention to take leave before the day which is twice as many days in advance of the first day of leave as the number of leave days requested. Similarly, if the employer requires a worker to take leave, the employer must give notice of this within the same timescale. If a worker has requested leave and an employer does not agree to the worker taking that leave, the employer must give notice of this to the worker before the day which is as many days in advance of the first day of leave as the number of leave days requested. There are different provisions under the Agricultural Wages (England and Wales) Order 2012.

4.8 These Regulations will align the position for agricultural workers in England regarding commencement of leave year and notice for taking leave with the position for workers in most other sectors under the 1998 Regulations. However, saving provisions will preserve a worker's arrangements in place before 1st October 2013 for the commencement of leave year and for notice of leave taking until the end of the current employment in agriculture.

4.9 The debate in the House of Commons, originally scheduled for 3rd September 2013, was cancelled in view of the application to withdraw the earlier draft amendments to the 1998 Regulations. It is not possible to withdraw those earlier draft amendments in respect of workers in England and Wales until 8th October when both Houses of Parliament will have returned from recess. However, in order to provide certainty to agricultural workers in England, it is essential that these amendments to the 1998 Regulations come into force on 1st October 2013 when the Agricultural Wages (England and Wales) Order 2012 ceases to be in force in England. If these amendments to the 1998 Regulations do not come into force on 1st October 2013, there would be no provision for commencement of leave year, nor arrangements for giving notice to take leave, for new agricultural workers in England coming into the industry from that date onwards. This could cause confusion for both agricultural workers and their employers. Given the reasons for the tight timescale for bringing these amendments into force, that is the need to preserve the agricultural minimum wage in Wales on and beyond 1st October 2013 pending the ruling of the Supreme Court, the instrument is subject to the negative resolution procedure and has been made under section 2(2) of the European Communities Act 1972.

5. Territorial Extent and Application

This instrument applies in relation to England only.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government is committed to providing an environment for all sectors of the economy in which private enterprise and businesses can flourish. A key coalition objective is to simplify employment legislation and remove unnecessary burdens from businesses. As part of this, the Government has brought forward legislation through the Enterprise and Regulatory Reform Act 2013 to abolish the Agricultural Wages Board for England and Wales in order to bring employment in agriculture into line with other sectors of the economy. As from 1st October 2013, there will no longer be a separate employment regime for agricultural workers in England but they will be protected by the National Minimum Wage Act 1998 (c. 39) and the 1998 Regulations as are other workers.

7.2 Agricultural workers with contractual rights immediately before 1st October 2013 reflecting an Agricultural Wages Order made by the Agricultural Wages Board will retain those rights until their contract is varied by mutual agreement or their employment comes to an end. This will include where a worker is entitled to more generous rights under their contract than under the 1998 Regulations, for example in relation to leave entitlement and rest breaks. However, agricultural workers already employed before 1st October 2013 will retain rights under that employment accrued under the Agricultural Wages (England and Wales) Order 2012 in relation to the commencement of their leave year and notice of leave taking until the end of that employment.

7.3 The removal of the separate agricultural minimum wage regime will lift regulatory burdens from farm and horticultural businesses and provide for the introduction of flexible modern employment practices. It will make it easier for employers and workers to come to arrangements which suit their own particular circumstances. This is intended to boost job opportunities and growth, and contribute to a successful and prosperous future for the industry.

8. Consultation outcome

8.1 There has not been a separate consultation on the amendments to the 1998 Regulations as they are technical amendments which are a consequence of the Government policy to abolish the Agricultural Wages Board and agricultural minimum wage regime, on which there has already been a consultation.

8.2 The Government consulted on the future of the Agricultural Wages Board for England and Wales and related Agricultural Wages Committees and Agricultural Dwelling-House Committees in England for four weeks from 16 October to 12 November 2012. Copies of the consultation documents can be found at:

<https://www.gov.uk/government/consultations/the-future-of-the-agricultural-wages-board-for-england-and-wales-and-agricultural-wages-committees-and-agricultural-dwelling-house-advisory-committees-in-england>

8.3 The proposal to abolish the Agricultural Wages Board and related English committees was originally announced in July 2010. Since then the policy has been discussed at meetings of the Board and the annual general meetings of the Agricultural Wages Committees in England. Views of stakeholders were already well known when the consultation was launched in October 2012 but the Government wanted to allow an opportunity for formal consultation in case there were arguments for retention that it had not previously considered. The four week period for the consultation was in line with the Government's New Consultation Principles, which advocate a more proportionate and targeted approach, designed to encourage active consideration of what period is appropriate to each individual exercise rather than defaulting to a 12-week period, particularly where there has already been previous engagement. In addition to the formal list of consultees, Defra wrote to around 13,000 people and organisations that regularly received copies of the Agricultural Wages Orders and during the consultation period arranged six special meetings of the English Agricultural Wages Committees in different regions of the country. David Heath, Minister of State for Agriculture and Food, also held a meeting with the Chair of the Board and the leaders of the two sides of the Board (employers and workers) to hear their views.

8.4 The consultation on the future of the Agricultural Wages Board asked four questions:

- Do you agree that employment legislation in the agriculture sector should be simplified?
- Do you agree that agricultural workers in England and Wales should be brought within the same minimum employment terms and conditions as workers in all other sectors of the economy?
- Do you agree with the Government's proposal to abolish the Agricultural Wages Board, Agricultural Wages Committees, Agricultural Dwelling House Advisory Committees, and the agricultural minimum wage regime?
- Do you have any additional points or options you would like Ministers to consider before making their final decision?

A numerical summary of the responses to the first three of these questions is set out in the table below:

Question	Total Number of responses	Yes	% of all responses received	No	% of all responses received	No preference expressed	% of all responses received
1. Do you agree that employment legislation in the agriculture sector should be simplified?	946	397	42%	69	7%	480	51%

2. Do you agree that agricultural workers in England and Wales should be brought within the same minimum terms and conditions as workers in all other sectors of the economy?	946	336	36%	171	18%	439	46%
3. Do you agree with the Government's proposal to abolish the Agricultural Wages Board, Agricultural Wages Committees, Agricultural Dwelling House Advisory Committees and the agricultural minimum wage regime?	946	347	37%	580	61%	19	2%

8.5 In response to question 4, additional comments made by those who responded included:

- Abolition of the Agricultural Wages Board and agricultural minimum wage regime should be carried out as soon as possible.
- The Government should look at other areas where regulatory burdens on farmers could be reduced, including the gangmaster licensing legislation.
- The consultation period was too short and there had not been adequate publicity.
- The Agricultural Wages Board should be retained, but simplified and modernised.
- The Gangmasters Licensing Authority should be maintained and adequately funded.
- There needs to be effective communication of what the changes will mean for agricultural workers and employers.

- Sufficient resources should be provided to Her Majesty's Revenue and Customs to ensure the effective enforcement of the National Minimum Wage regime in the agriculture sector.
- The National Farmers Union should organise a voluntary committee to provide guidance on wage setting.
- Agricultural workers in England and Wales will be disadvantaged compared to those in Scotland and Northern Ireland where the separate Agricultural Wages Boards will be retained.

8.6 The Government carefully considered the responses to the consultation exercise. While the responses to question 3 indicated a majority in favour of the retention of the Agricultural Wages Board, the Government did not consider that any new arguments had been put forward which would persuade it to alter its long stated intention to abolish the Agricultural Wages Board and related Committees, and bring employment in agriculture in line with that in other sectors of the economy. Moreover, key industry bodies, such as the National Farmers Union, Tenant Farmers Association, Country Land and Business Association and also professional organisations such as the Central Association of Agricultural Valuers supported the abolition of the Agricultural Wages Board.

9. Guidance

Defra is making guidance available for workers and employers in England and Wales as to what the introduction of the National Minimum Wage in England and the amendments of the 1998 Regulations in their application to England will mean for them.

10. Impact

10.1 No significant impact on business, charities or voluntary bodies is foreseen as a result of these amendments.

10.2 No significant impact on the public sector is foreseen.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 These are technical amendments, which are not expected to have any significant impact on business. Hence it is not considered necessary to make adjustment for small businesses.

12. Monitoring & review

Defra collects a range of statistics in the agricultural sector, including information about agricultural employment, and will continue to do so after the abolition of the AWB

13. Contact

Judith Marsden at the Department for Environment, Food and Rural Affairs Tel: 0207-238-5748/07827-821645 or email: Judith.marsden@defra.gsi.gov.uk can answer any queries regarding the instrument.