



Scottish Agricultural Wages Board – Scottish  
Government Consultation

July 2015

## Introduction

Unite – the Union Scotland represents around 140,000 working people and their families throughout Scotland. Unite is the UK's largest trade union with 1.4 million members in a range of industries including transport, construction, financial services, manufacturing, print and media, the voluntary and non-profit sectors, local government and the NHS.

As a Union with a significant membership in the wider agricultural sector including manual, craft and lead workers, logistical and forklift drivers, engineering, construction, machine operators and meat processors - we strongly support the retention and the expansion of the remit of the Scottish Agricultural Wages Boards (SAWB hereafter). We do so for a multitude a reasons, which this submission will explain, but primarily we believe that the Orders set by the SAWB constitute a model of best practice in industrial relations including: the removal of discriminatory age wage rates and the provision of enhanced holiday entitlements above the statutory minimum; recognition of the unique nature of the work conducted by those in the sector; recognition of the need to address the notoriously high fatality and injury rates in agriculture; and the need to challenge the prevalence of gangmasters in the sector – which particularly affects migrant workers (such as those from the EU accession states), who are at a greater degree of risk of exploitation.

Unite wishes to assert at the outset that we are greatly concerned by the remit of this consultation, which is the following:

- (a) the Scottish Agricultural Wages Board (SAWB) should continue, as it does now, to set minimum rates of pay and certain other conditions for agricultural workers in Scotland and, if so, how this might be done; or
- (b) the SAWB should be retained as an advisory body only, giving the Scottish Government the discretion to fix minimum wage rates and other conditions based on advice given by the SAWB; or
- (c) to remove all existing arrangements for agricultural workers leaving their pay and conditions to be determined under general employment law.

We contest that the options above are designed to deliberately constrain the opportunities to genuinely consider the future of the SAWB by excluding a specific question in the consultation on how the work of the board could be enhanced and improved, and, for the Orders to promote a living wage through the board, despite this being a stated aim of the Scottish Government.

Therefore, Unite has the strong impression that the relevant Cabinet Secretary for Rural Affairs, Food and Environment has launched this latest 'periodic review' of the SAWB with a view to seeking to abolish it. We also believe that the previous consultation in 2008 was specifically designed to achieve this objective. Unite believes that abolition or downgrading the role of the SAWB would not be in keeping with the Memorandum of Understanding agreed by the First Minister and the STUC on 15 May 2015.<sup>1</sup> The First Minister stated: *“A fair society supports a strong economy and we are focused on delivering this by growing our economy, protecting public services, tackling inequality and empowering our communities.”* The abolition or downgrading of the SAWB would facilitate inequality and a less safe working environment in the industry and would be in sync with the deregulatory and austerity motivated agenda that the Scottish Government purports to reject.

## **1 Context**

The functions of Non-Departmental Public Bodies are normally reviewed at least once every five years. On January 30, 2008, the then First Minister, Alex Salmond, made a statement in Parliament concerning the Scottish Government's plans to re-organise public services - with an intention to reduce the 199 national public service organisations by at least 25 per cent. The SAWB was mistakenly classified as a “quango” and included in the move to reduce the number of such organisations.

The proposal to reject the abolition of the SAWB was defeated by a campaign led by Unite the Union. This featured consideration of Petition PE1139 by the Scottish Parliament's Public Petitions Committee. There was widespread and cross-party support for the retention of the SAWB, including from MSPs who are now Scottish

---

<sup>1</sup>

<http://www.stuc.org.uk/news/1161/mou-130515>

Government Ministers. For example, Angela Constance MSP, at the presentation of the Petition in support of the SWAB's retention, stated:

*“ I have never been a lover of the quango state and never will be, but the board does not sound as if it is a quango. It sounds like a more meaningful partnership arrangement. Expenditure on it, at £130,000 per year, is not vast. I hope that the committee can throw its weight behind the petition. If we are moving into a consultation period, could the committee make today’s discussion part of that consultation ?”*<sup>2</sup>

Richard Lochhead MSP, the current Cabinet Secretary for Rural Affairs and the Environment, in a contribution in the Scottish Parliament on 3 September 2009, also recognised a number of the key arguments made during Unite's campaign, when he stated: *“...that the nature of many farming businesses makes coherent bilateral pay negotiations difficult.”* In addition, we welcome the recognition by Mr. Lochhead in his statement to Parliament when he said: *‘the Board still has a role to play in guiding wages decisions, and in protecting the minority of agricultural workers who are on minimum pay and conditions’*. This was a key argument in Unite’s Petition and in our previous submission to the ‘Agricultural Pay and Conditions: Future Policy for a Statutory Minimum Wage’. Unite strongly contests that this situation has not changed and we believe the Board's remit should be expanded.

In the 2009 SAWB consultation, Unite drew particular attention to the letter sent by the then Scottish Government Rural Directorate, Ronnie Grady, on 2nd October 2009 to Fergus Cochrane, Clerk of the Public Petitions Committee, which stated:

*As you know, Mr Lochhead is of the view that because of the potential vulnerability of agricultural workers, in particular. The SAWB continues to carry out a vital role in chairing discussions between employers and employees in agriculture and in setting minimum rates of pay.*<sup>3</sup>

Unite would also like to draw attention to some of the submissions made in the previous consultation, such as that by the Church of Scotland, who rightly recognised the

---

<sup>2</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=3117&mode=pdf>

<sup>3</sup> <http://archive.scottish.parliament.uk/s3/committees/petitions/petitions submissions/sub-08/08-PE1139H.pdf>

important role that the SAWB performs in highlighting the dynamics of low pay and its impact on migrant communities:

*“We recognize that low pay is a particular concern within the agricultural sector. Furthermore we recognise that low pay has the tendency to have a particular impact on minority communities within Scotland. The Church stands against all forms of prejudice, however expressed, and hope that such prejudice will find no home in Scotland”.<sup>4</sup>*

## **2 Remit and Key Facts**

Wage setting in Scottish agriculture has been in place in various forms since 1917. The Agricultural Wages (Scotland) Act 1949 consolidated the regulatory Acts of 1937 and 1940 and provided for the establishment of the SAWB. Under the 1949 Act and its subsequent amendments, the SAWB was empowered to make Orders fixing minimum wage rates, holiday entitlement and other conditions of service for agricultural workers in Scotland.

The expression ‘agricultural workers’ covers workers in agriculture and horticulture including market gardens, gardens and nursery grounds. It also applies to foresters and workers in certain types of fish farming. However, at present, it excludes those in private or ornamental gardens.

- There has been some form of centralised wage setting in agriculture in Scotland since 1917
- The SAWB was established in 1949
- The SAWB sets minimum wage level and other minimum terms for workers in agriculture and horticulture.
- The estimated cost of SAWB operation is £130,000 (Source: Scottish Government)
- Decisions taken by the SAWB affects 25,480 workers. Of this 12,688 are employed full-time with the remaining 12,480 part-time or seasonal workers.

The wage rates agreed by the Wages Board on August 20, 2014 were in line with those announced at the SAWB's negotiation meeting held in May 2014. The minimum rate of pay for agricultural workers with more than 26 weeks continuous employment increased by 15p per hour to £7.14 from October 1, 2014 - bringing the minimum wage for a 39 hour week to £278.46.

The headline rates agreed by the Board in 2014 were:

- A minimum hourly rate of £6.50 for all workers in the first 26 weeks of employment. This increase was in line with increases to the National Minimum Wage (an increase of 18p per hour);
- A minimum hourly rate of £7.14 for all workers employed for more than 26 weeks by the same employer (an increase of 15p per hour);
- A minimum hourly rate of £3.96 for workers who undertake a Level 2 Modern Apprenticeship in Agriculture (an increase of 8p per hour);
- An increase in dog allowance to £5.41 per week for each working dog up to a maximum of 4 dogs (an increase of 11p per dog);
- The additional sum payable to workers with appropriate qualifications increased to £1.08 per hour (an increase of 2p per hour);
- An increase in the daily rate of the accommodation off-set for accommodation other than a house to £5.01 (an increase of 10p per day).
- A minimum hourly rate of £9.75 for overtime for all workers in the first 26 weeks of employment (an increase of 27p per hour);
- A minimum hourly rate of £10.71 for overtime for all workers employed for more than 26 weeks by the same employer (an increase of 22p per hour).

Due to UK equality legislation introduced in 2006, the SAWB removed the distinction between wages rates for workers of different ages. This was raised as a concern by businesses on the basis of anticipated increased costs. However, the issue has been addressed with the SAWB introducing a new apprenticeship wage rates for young workers participating in a new Level II Apprenticeship for agriculture.

The minimum rate for agricultural workers to £7.14 per hour from 1 October 2014 brought the rate closer to the recommended Scottish Living Wage of £7.85 per hour. However if the SAWB is abolished (or downgraded to an 'advisory body' process with no regulatory or statutory powers) any further closing of this gap will be put in grave danger and is more likely to result in significant downwards pressure to the UK national minimum wage rates (£6.50 for over 21's), which are significantly below the over SAWB 26 week rate of £7.14.

The First Minister said recently:

*“The Scottish Government is committed to fairness and supporting those on the lowest incomes, and we recognise the real difference the Living Wage can make to the people of Scotland. Research published just last week highlighted enhanced productivity, reduced absenteeism and better staff morale as just some of its potential benefits.*

*“However, more needs to be done. We are committed to having 500 Scots-based Living Wage accredited employers by March 2016, a decisive long-term commitment to those on the lowest pay.”<sup>5</sup>*

As the Cabinet Secretary has also previously stated, over 80 per cent of farm workers are paid at rates above the Wages Board minimum but *“the Board still has a role to play in guiding wages decisions, and in protecting the minority of agricultural workers who are on minimum pay and conditions”*.<sup>6</sup> Proposing to abolish or downgrade the SAWB would bring the Scottish Government into direct conflict with its stated position outlined

---

<sup>5</sup> <http://news.scotland.gov.uk/News/First-Living-Wage-government-1979.aspx>

<sup>6</sup> <http://wayback.archive-it.org/3011/20130204044619/http://www.scotland.gov.uk/News/Releases/2009/09/03173545>

above, which is to encourage businesses to sign-up to the Living Wage and to resist the deregulation which is a key component of the UK Government's austerity agenda.

### **3 Success of the SAWB**

- ⤴ Equal pay and conditions achieved for women following a 1993 equality audit;
- ⤴ SAWB rates include age groups excluded from the NMW
- ⤴ SAWB holiday rates i.e. 5 weeks holiday per year are greater than the statutory minimum period of annual leave;
- ⤴ SAWB terms are better in other areas e.g. overtime, holiday pay, paid leave stand-by rates, and 39-hour week.

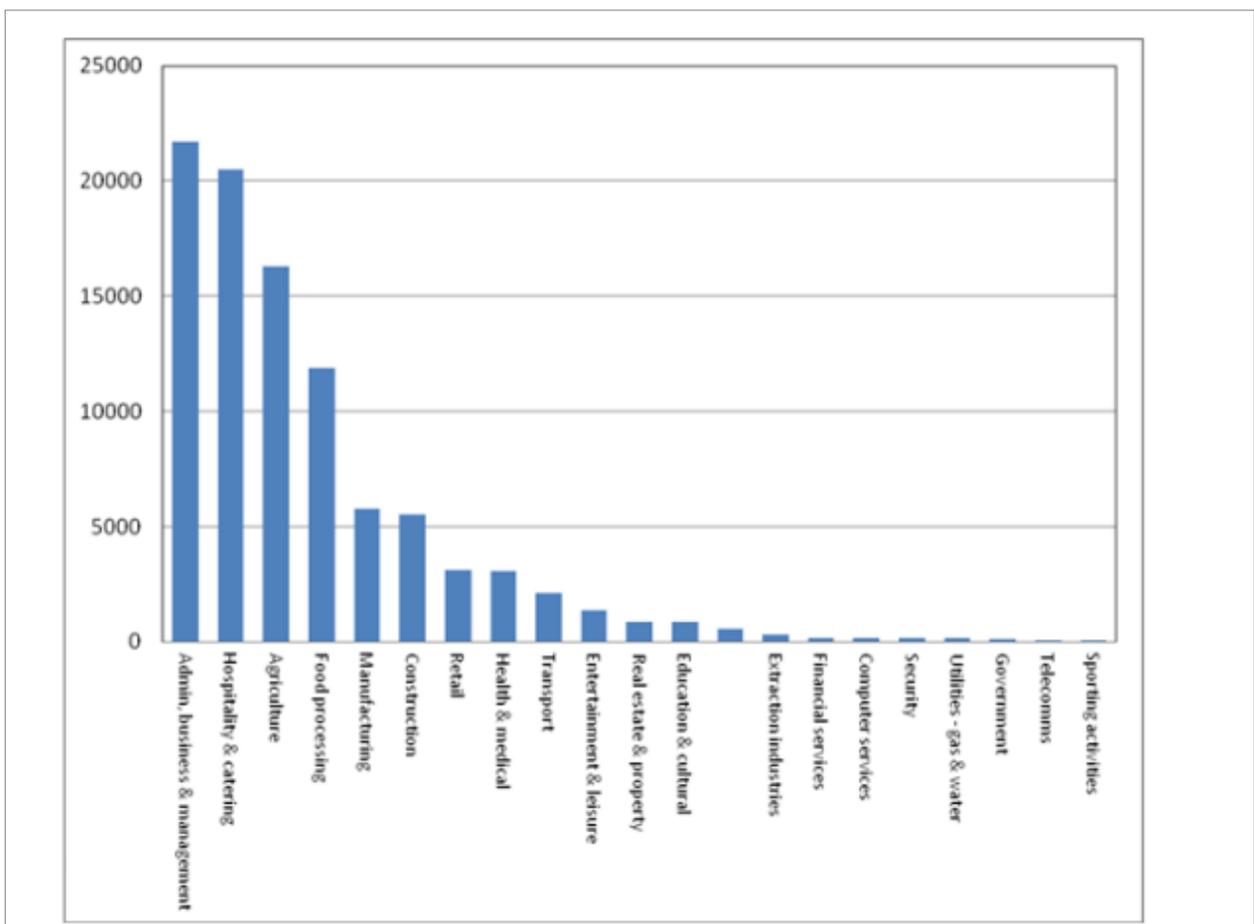
One example which clearly demonstrates the success of the SAWB is in relation to an employer who forced mainly migrant workers to work 39 hours over 4 days under one contract of employment and a further 39 hours over 3 days on another. Using different employer names for each contract, this employer was not only breaching the wages order but also the Working Time Regulations. These workers were not paid for the overtime they had clearly worked; they only ever received plain time, and not at the minimum amount set by the board, nor even the national minimum wage.

The workers had to pay for compulsory transport to work when the company moved them to another site in an attempt to avoid paying the “over 26 weeks” SAWB rate. They were also forced to continue working into late evening as the compulsory use of company transport meant having to wait until that transport was available. The SAWB and its inspectorate put an end to this blatant exploitation – but without a strong SAWB, such examples could arise again.

The Scottish Government has itself previously stated the following: “*we are not aware of any other body in Scotland that would monitor the employment of foreign labour through agencies.*” (*Scottish Executive, 2005b*). In 2012 Scotland accounted for the third highest proportion of workers in the UK on the seasonal agricultural workers scheme. There is also evidence that much of the seasonal labour supply into horticulture is informal or irregular. For instance, a survey in 2007 (conducted by Fife Partnership) of migrant

workers (mainly from A8 countries working in Fife) found that one in seven did not have the required National Insurance number (NINo) registration.

A report by the Scottish Government (2009) entitled *The Experience of Rural Poverty* stated that the nature of employment in rural areas (seasonal, agricultural) means that 'many migrant workers' face unemployment and, in some cases, homelessness at certain times of the year. The obstacles that exist for rural workers in general are aggravated for migrant workers due to language difficulties, lack of information on and awareness of employment rights, indebtedness to agencies or traffickers, and physical and social isolation.<sup>7</sup> The table below, featured in a *Study of Migrant Workers in Grampian*, shows that food processing is the main sector employing the greatest overall number of migrant workers and is followed by agriculture, with nearly a third of



employees in this industry being migrant workers.<sup>8</sup>

<sup>7</sup> <http://www.gov.scot/Resource/Doc/262658/0078512.pdf>

<sup>8</sup> <http://www.gov.scot/Resource/Doc/1125/0086222.pdf>

The above table provided by the Workers Registration Scheme registrations (May 2004 – April 2011) highlights the sectors worked in by migrant workers from A8 countries overall in Scotland: ‘administration, business and management’ (23%), hospitality (21.7%), agriculture (17.3%) and food processing (12.6%) sectors account for the bulk of registrations. The findings are illuminating because of the extent to which A8 migrants form a significant proportion of the UK and Scottish rural and agricultural workforces. Less than one per cent of all jobs in the UK are in agriculture (ONS, 2011a), yet the data suggests that up to a quarter of all employees in 2011-12 were A8 workers.<sup>9</sup> The table below by McCollum et al (2012) reinforces the prior points. Consequently Unite contests that removing or downgrading the role of the SAWB will have a direct and detrimental impact on race equality and endanger migrant workers disproportionately, given their concentration in the agricultural sector in Scotland.

Sector	WRS registrations May 2004-April 2011 as percentage of employee jobs April 2011	
	UK	Scotland
Agriculture	25.0%	29.6%
Hospitality and catering	10.1%	11.4%
Manufacturing	2.9%	3.3%
Construction	1.8%	3.2%
Transport	1.7%	1.9%
Retail	1.0%	0.8%
Health and medicine	1.1%	0.7%
Total (all sectors in economy)	3.6%	3.6%

The AWBs across the UK nations not only cover workers formally included in the scope of the Order, but also many thousands for whom the AWB rates are a benchmark. This has been the case for many years, and there is a wide range of jobs covered by this way.

Employers have valued the AWB benchmark for the same reasons as employers within the scope of the AWB. That is, the AWB is well-known, annual, and detailed, and means that individual employers – particularly SMEs with neither HR departments nor advisers, nor an appetite for hard bargaining with the colleagues they rely upon each day, can award an increase and other conditions in the most straightforward way.

Unite's survey of farm pay in England after AWB abolition received responses that confirmed the extent of the benchmarking role of the AWB. Members reported that they were not formally covered by the remit of the AWB, but had their pay pegged to AWB rates with an annual update. These included equestrian staff, estate workers and this groundsman from Oxfordshire:

*"I am employed on a large estate as a groundsman and as such I am not strictly covered by the AWB. However, my pay and that of my colleagues is annually uprated in the line with the AWB award for that year. The AWB provides a benchmark for many workers in the rural economy, outside of agriculture from estate workers to gamekeepers, woodsmen, gallopsmen and even workers looking after golf courses. I am completely opposed to the abolition of the AWB and would like to see its role widen to encompass other vulnerable rural workers."*

The numbers covered by this benchmarking will never be known, but as these survey responses and anecdotal evidence from officers across the UK can confirm, the AWBs play a role in setting pay far more widely than for the workers formally included in their scope.

#### 4 Nature of the industry

- ⤴ Work in isolation - lack of local collective cohesion, limiting ability to effectively negotiate with individual employers;
- ⤴ High dependency on employer/employee relationship e.g. 32% of workers in the industry are estimated to live in tied accommodation
- ⤴ Lack of mobility - few alternative employment in many rural areas;
- ⤴ Lack of management structures and procedures;
- ⤴ High skills mix - animal husbandry, arable skills, building & mechanical skills
- ⤴ Higher costs of living and lack of services in rural areas eg. in transport and housing;
- ⤴ Dangerous industry - according to the Health & Safety Executive, of the main industrial sectors, agriculture had the second highest rate of fatal injury in 2013/14 and one of the highest rate of injuries and illnesses of any sector.<sup>10</sup>

Scottish agricultural workers are not directly comparable to other workers in Scottish industry. Whilst other sizable groups can enter into collective bargaining agreements on a workplace or individual company basis, farm workers cannot, in the vast majority of cases, meet the threshold for statutory trade union recognition rights. Previous statistics have illustrated that of the 6,632 holdings in Scotland employing full-time employees, only 176 employ 7 or more workers.

- ⤴ 3,753 employ 1 FTE
- ⤴ 1,608 employ 2 FTE
- ⤴ 596 employ 3 FTE
- ⤴ 288 employ 4 FTE
- ⤴ 211 employ 5-6 FTE

Therefore, of 6,632 holdings, 6,456 employ less than 7 FT staff.<sup>11</sup> These statistics demonstrate that although the Scottish Government may be of the view that the National Minimum Wage and the Working Time Regulations replicate in part the provisions of the SAWB, they do not encompass the minimum standards contained

---

<sup>10</sup> <http://www.hse.gov.uk/statistics/overall/hssh1314.pdf>

<sup>11</sup> Economic Report on Scottish Agriculture, p88, Scottish Executive, 2007

within the SAWB process to effectively regulate a low density, geographically disparate and isolated industry. Isolation may also have had implications for the scale of the responses witnessed in the previous consultation 2008/9 by those working and representing workers in the industry.

Unite strongly urges that the merits of 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. Based on this condition we believe that it would be highly detrimental to the industry and its workers if the Board was not retained.

## **5 Case Studies**

### **England and Wales**

In October 2013, as part of the deregulatory and austerity agenda pursued by the Conservative-led UK Government, the Agricultural Wages Board, after more than 60 years of pay protection for 140,000 agricultural workers, was abolished in England. The AWB in England set minimum pay and conditions and provided a benchmark for thousands more, including estate workers and equestrian staff.

A key problem now occurring, as predicted by the current Cabinet Secretary, is that individual workers are having to negotiate face to face with their employer on pay. In a survey by Unite, the vast majority of farming employers in England and Wales - some 75% – did not want to be charged with undertaking wage bargaining. They are heavily dependent on their employees and do not want the tension that comes with imposing wage deals.<sup>12</sup>

Many farmers valued the AWB mechanism for setting clear and straightforward rates of pay and conditions and are now very concerned about the prospect of having to negotiate with the workers they depend on. The UK Government's own figures estimate that farm workers will lose more than £258 million over 10 years in lost pay, sick pay

---

<sup>12</sup>

<http://www.unitetheunion.org/how-we-help/list-of-sectors/rural-and-agricultural/agriculture/savetheawb/>

and holiday entitlement. As a consequence, millions of pounds will be taken away from rural families, communities, shops, businesses, and services. There is also concern that supermarkets – when they know farm businesses are paying less in wages - will drop the prices that they are prepared to pay for agricultural produce, detrimentally affecting employers as well as employees.

Unite conducted a postal survey of all its Rural and Agricultural members in England in April 2014. The aim was to research what was happening to pay after the abolition of the AWB in England and to get a picture of pay across the union's rural membership more generally.

The survey revealed that:

- 1) More than a third of those responding to the survey had been covered by the AWB. These included workers in: agriculture; horticulture; poultry processing; food processing; private estates; mushroom industry; equestrian industry
- 2) Only 56% of these had had a pay rise since 1 Oct 13 – the date when abolition took effect in England. All would have had a pay rise on 1 Oct 13 if the AWB had not been abolished.
- 3) The median pay rise was 2% - lower than whole economy median
- 4) The average pay rise was lower than whole economy average
- 5) 82% had their pay rise imposed by their employer. Both the government and the employers had claimed that abolition of the AWB would free employees to conduct individual negotiations with their employer
- 6) There were numerous instances of breaches of TUPE, with the biggest issues being changes to sick pay and to hours of work when transfers to different employers occurred.
- 7) Members reported changes to their terms and conditions generally, including beyond and outwith transfer situations: “no sick pay, working 40 hours instead of 39 before overtime”, “working more hours for no more money”

The above highlights a litany of examples of downward pressures and growing exploitation as a direct consequence of the abolition of the AWB in England.

In contrast, the Northern Ireland Agricultural Wages Board has been retained, following a consultation by the Assembly in September 2012. Unite argued in its submission that abolition of the board would leave up to 80,000 rural workers with little or no protection as well as breaking international conventions under ILO regulations. The union also argued that, with unemployment running in Northern Ireland at 8.2 per cent at the time of the consultation, further deregulation of employment laws would in no way assist the need to bring about economic growth.

The Northern Irish Agriculture minister Michelle O'Neill MLA said:

*"I firmly believe the AWB structure is a valuable forum for wage negotiations and importantly used as a benchmark for the wider agri-food industry. The AWB guarantees fair pay and conditions for agricultural workers. It will now continue to protect the rights of low paid agricultural workers, including migrant workers, here by ensuring enforceable employment conditions which I believe can only have a positive impact on the sustainability of the rural economy."*<sup>13</sup>

*As we try to grow the economic potential of the agri-food sector in these difficult times, it's essential workers in this industry are both protected and have the skills, not only to help the sector flourish but to encourage others to consider a career within it."*<sup>13</sup>

In a decision by the UK Supreme Court in July 2014, the move by the Welsh Government to set up its own version of the Agricultural Wages Board (AWB) to protect the incomes of thousands of Welsh agricultural workers was upheld. The Welsh Assembly's move has been welcomed by the Farmers' Union of Wales and Wales Young Farmers as the most effective and fairest way to regulate wages and conditions for the agricultural industry. Therefore, if the Scottish Government pursues a strategy of abolition or downgrading of the SAWB, it will find itself in the unenviable position of

following the UK Government's lead, in contrast to that of other devolved administrations.

## 6 International recognition

- ✧ The Social Charter of the Council of Europe (Article 2) calls for additional holidays and reduced hours for dangerous & unhealthy occupations;
- ✧ ILO Convention 99 calls for a minimum rate in agriculture with an adequate machinery for creation and enforcement;
- ✧ The UK has voluntarily undertaken and ratified the obligation to promote collective bargaining pursuant to Article 4 of International Labour Organisation ("ILO") Convention C98 of 1949 and pursuant to Article 6(2) of the European Social Charter of 1961. The State's duty to promote collective bargaining is in fundamental contradiction with its proposal to abolish collective bargaining for an entire industry and in circumstances where the existing statutory recognition machinery has no application (because it excludes employers with less than 21 workers and practically all agricultural workers are employed in such businesses). An advisory panel in our opinion does not and cannot substitute for a statutory mechanism.
- ✧ Both the United Kingdom (from 1953) and Ireland (from 1978) are signatories to the Convention Concerning Minimum Wage Fixing Machinery in Agriculture (ILO No 99 - 28.6.1951). This Convention, in Article 1.1, states that, "*Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations*".
- ✧ Unite is currently challenging the abolition of the AWB in England through the European Court of Human Rights and a hearing is expected to take place later this year. The union's action is on the basis that the AWB in England was a form of collective bargaining and that abolition was therefore an attack on Article 11 on the right to collective bargaining.

## **Conclusion**

- ⤴ In the future any 'period review' should consider the extension of the remit of the SAWB and the absence of consideration of this option is a critical flaw in this consultation.
- ⤴ The SAWB should be retained and its coverage extended to agriculture & horticulture-related workers who are presently excluded from its remit e.g. some estate workers & private gardeners, and some packing station workers;
- ⤴ Measures should be considered to further improve the enforcement of SAWB rates and to effectively tackle rogue employers operating and exploiting workers in the agricultural sector.

***For further information please contact:***

Andrew Brady ([Andrew.Brady@unitetheunion.org](mailto:Andrew.Brady@unitetheunion.org)) on 0845 345 0141 at the Campaigns,