

Alun Davies AC / AM
Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a
Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and
European Programmes



Llywodraeth Cymru
Welsh Government

Ein cyf/Our refSF/AD/3545/12

Lord Dafydd Elis-Thomas AM
Chair of the Environment and Sustainability
Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

19 November 2012

Dear Dafydd

AGRICULTURAL WAGES BOARD

Thank you for your letter dated 29 October 2012. I would like to confirm that I will attend the Environment and Sustainability Committee's meeting on 22 November to answer your questions in relation to the Agricultural Wages Board (AWB).

You have requested the following information and relevant documents to help you with your inquiry:

Details of the Welsh Government's legal position, including identification of the aspects of the UK Government's proposed course of action that you believe cuts across devolved matters.

Please see the attached document outlining the legal background to this issue and answering your specific queries.

Copies of all communications between the Welsh Government and the UK Government at both Ministerial and Official level in relation to the Agricultural Wages Board from May 2010 to date

Attached are copies of all relevant correspondence from the current Deputy Minister for Agriculture, Food, Fisheries and European Programmes at Ministerial level to the UK government on this issue. Collating all communications, including e-mails between the numerous Welsh Government and UK Government officials involved over this protracted period where AWB was an issue would be a very large task needing additional scrutiny for any legal advice provided in confidence. Given the resource implications and the time required to complete this query, I am afraid that I cannot currently provide that information.

Dates and copies of the minutes of all meetings held between the Welsh Government and the UK Government at both Ministerial and Official level in relation to the Agricultural Wages Board from May 2012 to date

Please see attached a list of all relevant meetings and agenda/minutes where available.

A copy of the business case and financial appraisal that underpinned the Welsh Government's decision in 2010 that establishing a Wales-only Agricultural Wages Board was unaffordable

In 2010, The Welsh Government was given an unacceptably short period of time by UK Government to consider the future of the AWB. As a result, a decision had to be made quickly and without a business case and financial appraisal in place. As this decision was taken by the previous Minister, I am unable to provide further details on this matter.

A handwritten signature in black ink, appearing to read 'Alun Davies', with a horizontal line underneath.

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Welsh Government response to Environment and Sustainability Committee request for “Details of the Welsh Government’s legal position, including an identification of the aspects of the UK Government’s proposed course of action that you believe cuts across devolved competence”

Legislative competence

1. The Welsh Government’s legal position is set out in the letter from Alun Davies, Deputy Minister, to David Heath of 25 October 2012. We explained that we did not share the UK Government’s view that the AWB is not a devolved matter.
2. We referred to section 108 of, and Schedule 7 to, the Government of Wales Act 2006 (“GOWA”) which prescribe the scope of the National Assembly for Wales’ (“the NAW”) legislative competence. A provision is within competence if it relates to one or more of the subjects listed in Part 1 of Schedule 7 and does not fall within any of the exceptions listed in that Part. Schedule 7 sets out the “subjects” in relation to which the NAW may legislate and these include “agriculture” (paragraph 1). There is no express exception to competence specified in that Part that would constrain the NAW’s legislative competence in relation to this matter.
3. To determine whether a provision relates to one or more of the subjects listed in Part 1 of Schedule 7, the „purpose test” in section 108(7) falls to be applied. The question whether a provision relates to a subject or falls within an exception is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances. The Welsh Government’s position is that the question of employment terms and conditions of agricultural workers is integral to the successful operation of agriculture. This is supported by the fact that until now it seems to have been considered that there was merit in treating agricultural wages and terms as a matter of special importance to agriculture, entirely separately from the national minimum wage regime.

Legislative vehicle for effecting change

4. It is the UK Government’s intention to abolish the AWB in England and Wales by order under the Public Bodies Act 2011. Under that legislation, any order abolishing the AWB in Wales would require the prior consent of the NAW if the AWB were to be regarded as falling within the legislative competence of the NAW.
5. The Welsh Government advised the UK Government that abolition of the AWB in Wales would engage NAW competence and, accordingly, NAW consent would be required as a pre-requisite to any order.

6. The Welsh Government has expressed a desire to retain the functions of the AWB in Wales and made an official request for the functions of AWB to be transferred to Welsh Ministers by any order brought forward to abolish the AWB under the Public Bodies Act 2011.

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Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Caroline Spelman
Secretary of State
Defra
Noble House
17 Smith Square
London
SW1P 3JR

23 September 2011

Dear Caroline,

Abolition of the Agricultural Wages Board (AWB), Agricultural Wages Committees (AWCs), the Agricultural Dwelling House Advisory Committees (ADHACs) and the Committee on Agricultural Valuation (CAV)

You will wish to be aware that, subject to the outcome of a public consultation in Wales, I am minded to preserve the functions currently performed by the AWB in Wales, including in particular setting the agricultural minimum wage and other terms under the Agricultural Wages Act 1948. If you do proceed with the abolition of the AWB, please consider this letter to be a formal request for its functions, in so far as they are exercisable in relation to Wales, to be transferred to an eligible person in Wales (in this case the Welsh Ministers) in accordance with the order-making powers conferred on Ministers of the Crown under clause 1(2) of the Public Bodies Bill. Given the different policy approach in Wales, I intend to consult on a Wales only basis with regard to the future of the AWB in Wales and the Welsh AWCs and the ADHACs, this will inform my decision making process.

I understand that Defra is intending to consult on the abolition of the AWB, and the English AWCs and the ADHACs, I appreciate that an order abolishing those bodies would also need to contain provision for the transfer of the AWB functions to the Welsh Ministers, in order to achieve the separate Welsh policy. It will therefore be necessary to co-ordinate our approach to the planned consultations. I have asked my officials to continue to work closely with yours to ensure this happens.

As the functions of the Committee on Agricultural Valuation are adequately covered by the Tenancy Reform Industry Group (TRIG), I agree to its abolition, subject to public consultation, the details of which we can agree at the appropriate point.

Best wishes

Alun Davies AC / AM
Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and European Programmes

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and
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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref

Rt Hon Caroline Spelman MP
Secretary of State for Environment, Food and
Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

30 May 2012

Dear Caroline

FUTURE OF THE AGRICULTURAL WAGES BOARD IN WALES

I am writing to confirm the Welsh Government's position on the future of the Agricultural Wages Board (AWB) in Wales.

Following our recent correspondence and discussions between our officials, I feel that it is important that the matter of the Agricultural Wages Board is finally resolved and that agreement is quickly reached between our two governments on the way forward. I have discussed this matter with both Jim Paice and David Jones and am anxious that we now find a solution which will be acceptable to all sides.

Our preferred option remains to have the functions relating to the AWB should be transferred to Welsh Ministers by the Order that abolishes the Board in England and Wales under Section 1 of the Public Bodies Act.

I welcome the comments on the UK Government's "respect agenda" that you made at our meeting in Nobel House on 2nd May and I hope that you also welcomed my commitment to a "team approach" across all the UK Administrations. I would like to take this opportunity to repeat that the Welsh Government is very anxious not to either prevent, or in any way delay, you moving ahead with your policy ambitions in this matter. I have already told my officials to make all preparations necessary to move forward quickly and without delay to complete any legal steps that we would need to take once we have reached agreement.

I understand that Defra proposes to consult on the issue of the AWB and the Order that will abolish the AWB under the Public Bodies Act 2011. I would be grateful if you could let me have sight of the draft Order before the proposed consultation. I would also appreciate it if you could inform me about the preliminary timeline UK Government intends to follow in relation to the proposed abolition of the AWB in England. All this information would be helpful to me in moving the matter forward in Wales.

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I hope that we can now reach an agreement regarding the AWB's future in this spirit of respecting each other's position and with a commitment to cooperation. My aim remains to maintain a close working relationship with the UK Government on this issue and would ask that your officials continue to work closely with mine on the matter.

I am copying my letter to Cheryl Gillan, Secretary of State for Wales.

A handwritten signature in black ink, appearing to read 'Alun Davies', with a horizontal line underneath the name.

Alun Davies AC / AM

Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and European Programmes

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Deputy Minister for Agriculture, Food, Fisheries and
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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref

David Jones MP
Parliamentary Under Secretary of State for
Wales
Gwydyr House
Whitehall
London
SW1A 2ER

30th May 2012

FUTURE OF THE AGRICULTURAL WAGES BOARD IN WALES

I am writing to you following our meeting last month when we discussed the future of the Agricultural Wages Board (AWB) in Wales.

It is unfortunate that we were unable to come to any consensus on the matter. Since we met I have taken the opportunity to meet again with Jim Paice. I have given Jim an indication of my intentions should we reach agreement regarding a transfer of the functions related to the AWB to Welsh Ministers by Order under section 1 of the Public Bodies Act 2011. I am very anxious to resolve the matter in line with the "respect agenda" and our "team approach" to allow the UK Government to move forward without any further delay to deliver on its policy objectives.

It is my clear view that the Welsh Government and Defra could reach agreement on this matter quite quickly allowing both governments to deliver on their policy ambitions - I am also very anxious that the Wales Office plays a positive role in supporting this outcome.

I am copying this letter to Cheryl Gillan, Secretary of State for Wales and to Caroline Spelman Secretary of State at Defra.

Alun Davies AC / AM

Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and European Programmes

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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref AD-/05417/12

Lord Taylor of Holbeach
DEFRA
Nobel House
17 Smith Square
London
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16th July 2012

FUTURE OF THE AGRICULTURAL WAGES BOARD IN WALES

Thank you for your letter of 18 June 2012 on the future of the Agricultural Wages Board (AWB) in Wales.

I welcome your commitment to cooperation based on the principles of the "respect agenda", a commitment that I and my colleagues in the Welsh Government share with you.

It is apparent that our positions regarding the future of the AWB are differing at the moment but I also believe that a workable and appropriate solution agreeable to both our Governments can be found. I hope you will understand that I need to consider the content of your letter in more detail and consult with my officials and government colleagues before I can respond to you fully on this matter.

However, I would very much welcome a meeting with you to discuss in more detail the AWB and its future in Wales in the expectation that we can reach a decision and resolve this matter.

I am copying my letter to Cheryl Gillan MP, Secretary of State for Wales.

Alun Davies AC / AM
Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and European Programmes

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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref

David Heath MP
Minister of State for Agriculture and Food
Defra
Nobel House
17 Smith Square
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SW1P 3JR

25 October 2012

AGRICULTURAL WAGES BOARD: The WELSH GOVERNMENT POSITION

Following our meeting on 15 October and your announcement the following day of a consultation in England and Wales on the Agricultural Wages Board (AWB), I am writing to confirm the Welsh Government's position in respect of this matter.

I am disappointed that we were not able to find a common ground during our discussions and that Welsh Government's view regarding legislative competence has, at best, been given superficial consideration by UK Government when handling the issue of the AWB. I am also very disappointed with Defra's decision to launch a consultation exercise on the future of the AWB without prior agreement with the Welsh Government. My officials were not forwarded the completed consultation documents until the afternoon of Friday 12 October 2012 and the Welsh Government was not given an opportunity to comment on or to provide any input to the documents before the launch of the consultation exercise just a few days later. Hence, it is my view that the comments you made in Parliament on 16 October 2012 in relation to sharing information and working closely with Welsh Government did not fully reflect the view of the Welsh Government.

During the debate, you also stated that the AWB is not a devolved matter at the moment. You are well aware that this view is not shared by Welsh Government. Section 108 of, and Schedule 7 to, the Government of Wales Act 2006 prescribe the scope of the National Assembly for Wales' legislative competence. A provision is within competence if it relates to one or more of the subjects listed in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part. Schedule 7 sets out the "subjects" in relation to which the Assembly may legislate and these include "agriculture" (paragraph 1). There is no express exception to competence specified in that Part that would constrain the National Assembly for Wales' legislative competence in relation to this matter.

It is also concerning that the UK Government continues to suggest that an alternative legislative vehicle could be used for abolishing the AWB for England and Wales –

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apparently as a deliberate policy to circumvent the need for Welsh Ministerial / Assembly consent.

As I have stated before, our preferred option remains to have the functions relating to the AWB transferred to Welsh Ministers by the Order that abolishes the Board in England and Wales under Section 1 of the Public Bodies Act 2011. I feel that this is a reasonable request that would allow both our Governments to pursue their own legitimate policy objectives.

I am still hopeful that we can reach an agreement regarding the AWB's future in the spirit of respecting each other's position and with a commitment to cooperation. My aim remains to maintain a close working relationship with the UK Government on this issue.

I understand that we will be meeting in the next few weeks. I hope that this will provide us with another opportunity to reach agreement on this matter.

I am copying my letter to David Jones, Secretary of State for Wales.

Yours
Alun

Alun Davies AC / AM

Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and European Programmes

Dates and minutes (where applicable) of meetings held between Welsh Government and U.K. Government at Ministerial and Official Level.

- **28 July 2010**- Teleconference between Welsh Government and U.K. Government officials with legal present.
- **21 June 2011**- Meeting to discuss work in relation to AWB, AWCs, ADHACs and CAV-Public Bodies Bill abolitions
- **19 March 2012** - Teleconference between U.K. Government and Welsh Government officials, including lawyers.
- **24 April 2012** - Deputy Minister Alun Davies AM meeting with David Jones MP, the then Parliamentary Under Secretary of State for Wales.
- **6 August 2012**- Deputy Minister Alun Davies AM telephone conversation with Richard Benyon MP Parliamentary under Secretary of State at DEFRA.
- **15 October 2012** – Deputy Minister Alun Davies meeting with David Heath MP, Minister of State for Agriculture and Food.
- **15 October 2012** – Deputy Minister Alun Davies meeting with Stephen Crabb MP, Parliamentary Under Secretary of State for Wales.

Meeting to discuss work in relation to AWB, AWCs, ADHACs and CAV- Public Bodies Bill abolitions – Cathays Park, Cardiff - 21 June 2011

Attendees

Andrew Felton policy, WG (AF)
Fiona Lloyd, Legal Services, Defra (FL)
Frances Gillett policy, WG, (FG)
Judith Marsden AWB policy, Defra (JM)
Neil Buffin, Legal Services, WG (NB)
Sian Hughes policy, WG (SH)
Steven Moorcroft, policy, Defra (SM)

The following informal notes were taken by Frances Gillett

JM: Royal Assent is expected to take place in November for the Public Bodies Bill.

Action: FG - Ministerial Briefing to update on position statement (to include action plan and decisions)

The Agricultural Wages Board (AWB), the Agricultural Wages Committees (AWC), the Agricultural Dwelling House Advisory Committees (ADHAC'S) and the Committee on Agricultural Valuation (CAV) will all be abolished at the same time.

Workers currently under the Agricultural Minimum Wage (AMW) will come under the National Minimum Wage by 1 Oct 2012. The order will be laid for this at the beginning of May 2012. 60 sitting days needed before recess. The order will come in on 30 Sept 2012.

Joint/parallel consultation will take place in September with WG consulting on their own AWC and ADHAC and Defra to consult on AWB. Or joint consultation on all bodies.

Committee on Agricultural Valuation- consultation wouldn't be needed if there is no one in the body/the body doesn't exist, however stakeholders (unions, industry stakeholders and those that have shown an interest) may have to be consulted. Defra to consult Welsh Farmers Unions.

Action: FG - Get consultation options document from Judith. Some options are not feasible under the Public Bodies Bill.

NFU in England want the abolition to take place whilst Unite would like modernisation, potential for stale mate with Ministerial decision.

Action: WG to translate consultation into Welsh, including the Impact Assessment and the Equality Impact Assessment.

There may be separate considerations for Wales Impact Assessment and Equality Impact Assessments.

Action: FG to send details of WG economist to Defra, for discussion between WG economist and Defra economist.

Action: FG to get timetable from Defra.

WG consultation will be smaller, thus quicker.

The Agricultural Minimum Wages is enforced by Defra, however, Defra use Rural Inspectorate Wales to investigate if they receive tip offs.

Action: NB to check if there is a requirement for National Assembly consent, this would need a letter from Defra to Alun Davies AM.

By December/January, consultation responses would have been returned however, these would have a limited impact on final outcome due to PBB giving provision to abolish only. If joint consultation found the AMW to be required, after abolishing the AWB, the functions could be transferred to another body.

Action: AF to look into in-house procedure for separate order laying process April/May 2012. Will this be enhanced procedure with the same safe guards.

Defra will deal with the AWB first using 60 day procedure, then AWC and ADHAC's will be under 40 day procedure.

Welsh Ministerial consent will be needed, enhanced affirmative consent. Wales will need it's own order.

Action: All to confirm timetable

Action: SH to send Welsh recess dates to Defra and check with Mandy Lewis for 2012 dates and ask about confirmative legislation.

Action: FG to find out how long translation will take per page, and find out whether Impact Assessments need translation.

Decisions needed by Alun Davies AM: Elin Jones AM already agreed abolition in principle so would the Deputy Minister be content with a joint consultation with Defra on the AWB, AWC and ADHACs? Also need to agree the consultation format.

Action: FG to provide SF to Alun Davies AM re. these decisions.

Action: JM to work out when the draft of the consultation document is needed. Draft consultation to be sent to Deputy Minister.

Action: JM and FG to form list of consultees and agree branding for joint consultation.

Consultation responses relating to Wales should be sent to WG.

Action: AF to feedback regarding consents.

BIS could take over functions of AWB or NMW authority. Sustainable Land Management Policy/Rural Inspectorate Wales would retain the authority to conduct inspections for 6 years following the abolition.

CAV will have a separate order for it's abolition in the future.

AWB research, conducted by Defra, covered Wales. This will be available soon.

Previous research suggested the AWB may have a negative impact. Protection can't be taken away, low skilled workers may be influenced.

Jim Paice firmly in favour of abolitions as he announced his intention before the policy was made. This wasn't in his manifesto.

Consultation likely to be online, this could be printed and posted upon request and emailed to the stakeholder list. A press release should go out in Gwlad.

The Agricultural Wages Board (AWB)
Note on the meeting between UK and Welsh Government Officials
19 March 2012

A teleconference to discuss the future of the AWB was arranged between UK and Welsh Government for 19 March 2012. The meeting was attended by Defra and Welsh Government officials, lawyers and Wales Office officials.

Unfortunately there were technical problems with the videolink which meant that the meeting had to be switched to a teleconference. Due to the time it took to arrange the alternative teleconference, there was very little time available to start any substantial discussions.

Defra officials were keen to address the issue of legislative competence and requested details of the legal advice that underpinned Welsh Government's position, i.e. that the remit of the AWB relates to a devolved matter. However, Welsh Government officials were not in a position to discuss details of this advice as the legal advice was provided in confidence and was subject to legal privilege.

There were no agreed actions following the brief teleconference.

Prepared by: Dr Adriana Kiss