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## ALP Paper – July 2009

# Seasonal Agricultural Workers Scheme 2009

### Introduction

This paper provides a brief overview of the Seasonal Agricultural Workers Scheme (SAWS) in 2009. It highlights the most common worker complaints as reported to the ALP together with examples of good SAWS operator practice to deal with the issues.

It also highlights how in some areas that greater compliance to legislative requirements can have unintended and unwelcome consequences for workers. These points are relevant to all labour providers, not just those operating SAWS.

### Overview of SAWS

The Seasonal Agricultural Workers Scheme is designed to allow farmers and growers in the United Kingdom to recruit low-skilled overseas workers to meet the shortage of local labour in agriculture. The scheme works on a quota basis. In 2009 the quota is 21,250 places. SAWS workers must be nationals of either Bulgaria or Romania and are allowed to work in the United Kingdom under the scheme for up to six months. Contrary to the situation in 2008 all reports indicate a plentiful supply of good quality workers this year.

The scheme is managed by nine approved operators who are responsible for assessing and monitoring farmers' and growers' ability to provide suitable work placements and ensuring that workers are treated fairly and lawfully. Operational practices vary greatly across the operators.

SAWS workers are restricted to working within the scheme and are given an expectation of at least 12 weeks work at 39 hours. Employment contracts issued to workers however are not required to offer minimum weekly working hours or a guaranteed period of work.

UK farmers and growers are under constant pressure by their customers to drive down costs within their operations. Naturally, labour costs form a significant element of this and must be tightly controlled for the farmers and growers to run their business at a profit.

The majority of SAWS workers expect to work hard. What they expect in return is the opportunity to earn reasonable money over a reasonable period. Some do not achieve this. In some cases, as a result of greater compliance with the Agricultural Wages Order and other employment legislation, earnings can be limited for some SAWS workers. This greater compliance is due to increased customer driven social compliance inspections and the perceived threat of greater enforcement activity, particularly by the Gangmasters Licensing Authority.

Whilst the GLA does not have any direct jurisdiction over farmers and growers who use SAWS workers there is a perception that the GLA will report issues to Retailers, Defra Agricultural Minimum Wage Inspectors, HMRC, HSE, Local Authorities and other bodies who do have enforcement powers.

## **Worker Complaints and Good SAWS Operator Practice**

Here are the most common worker complaints in 2009 as reported to the ALP together with how a good SAWS operator would deal with the issue.

### **1. Agricultural Minimum Wage is not paid.**

Picking management software such as Crop-Picker and Pickwise allows retrospective adjustment of hours worked. For example: Workers work on a piece rate, but, if they are not sufficiently productive, then people may work 10 hours and only earn £25 at the picking rate. Rather than additional training and assistance given and earnings being made up to the Agricultural Minimum Wage of £5.74 per hour the software can be adjusted to divide the money earned on the piece rate by £5.74 and produce a work record showing 4 or so hours worked. This enables compliance to be demonstrated during inspections but is obviously a breach of the minimum wage payment requirement.

Through SAWS Operator inspections of wage records it should be simple for a competent Field Officer to recognise if there is systematic adjustment of working hours and take action to remedy this. A good SAWS Operator would expect registered farms to have an additional record of working hours to the software programme and that every worker should sign off against their hours worked daily in agreement with the record.

### **2. Workers are misled about the length of work available**

SAWS workers may work under the scheme for up to six months maximum and then can reapply after a break of three months. Some end up with only around a month's work to cover the peak picking season. Workers report being left with no money to travel home.

A good SAWS operator ensures that the expectations of applicants and participants are accurately presented. All potential applicants would be informed that if they are not sufficiently productive then their participation in the scheme may be as short as three weeks and if dismissed for gross misconduct their participation may be a matter of days. In reality only a small proportion of participants leave within the first six weeks of participation and the average length of stay with a good SAWS Operator would be four months. Operators move workers between farms registered with them where work is available only for a limited time. For example, the peak daffodil harvest lasts for approximately four weeks. However this can be joined with the daffodil harvest in other geographical areas and with the glasshouse strawberry harvest in March and April. Moving workers between farms ensures that the SAWS quota is used efficiently and workers are given a reasonable length of work placement while undertaking work that is available only for a limited time period. A good SAWS operator ensures that workers dismissed soon after their arrival are provided with support by itself and the farmer which may include purchasing onward travel tickets and assistance to provide for themselves in the immediate future.

### **3. Farmers and growers are taking more SAWS workers than they need.**

Some farmers and growers are reported as taking the number of workers they need to fill their caravan or other accommodation spaces to maximise rent received. This is in excess of the actual amount of workers they need and means that there is only 2-3 days work per worker rather than a full week.

Some farmers and growers over-recruit to ensure that they have sufficient workers to work during their peak periods of production without having to pay overtime. This means that at times of non-peak productions workers can be left with a limited amount of work.

A good SAWS Operator in such circumstance ensures that there is a reasonable expectation of an average working week of 39 hours per week plus for the period of a participants stay in the UK. If work availability becomes limited participants can be provided with additional work on other farms registered with the same SAWS operator locally or participants can be moved to another registered employer for the remainder of their stay in the UK.

When work is limited farms registered with a good SAWS Operator are not permitted to charge any rent or are asked to charge a reduced amount to participants.

#### 4. Earnings are restricted to a basic level.

In previous years it has been the norm for all hours worked to be paid at basic rate. Enforcement of the Agricultural Wages Order rules on overtime payments (due after 8 hours in a day or 39 hours in a week) has had the effect that farmers and growers are limiting hours worked so that no overtime is required to be paid. This is obviously within the law and is done understandably to contain labour costs. The consequence for workers is that earnings are reduced compared to previous years.

A good SAWS operator would ensure through farm inspections and monitoring that there is a fair balance between a farmer controlling the level of overtime given for reasons of cost and the provision of a reasonable opportunity to participants for earning well. Furthermore it is a negative aspect of some social compliance guidelines that farmers are not permitted to allow workers of any type to work more than 48 hours per week. This is often unpopular with SAWS workers.

#### 5. All but the fastest workers are terminated.

Farmers and growers are putting more types of work onto piece rates to enable productive workers to earn more and to encourage productivity. In previous years slower workers on piece rates may have been paid less than the Minimum Wage during periods where they were learning the job, or were unproductive, for instance when there was little crop or it was difficult to pick.

Farmers and growers are now more conscious of and compliant in their legal responsibilities than in previous years in respect of paying under the minimum wage. Where piece rate workers earn less than the minimum wage over the pay reference period pay must be topped up.

For cost efficiency reasons farmers and growers seek to avoid this requirement to top up wages. The only alternative that many see is to swiftly remove slower workers from their operation.

In some cases, after an initial training and induction period, workers are measured after two hours work and if not sufficiently productive they are stopped working for the day, thus avoiding having to pay the slow worker for the whole day. After induction training, workers who do not hit piece rates are warned that their work is not to the required standard and after passing through the disciplinary procedure of the farmer their employment will be terminated. This process usually takes place over a period of two to three weeks dependent on the level of improvement made but it may take place after only 3-5 days. Workers in such a situation may find themselves with no other SAWS work available and with insufficient money to travel home.

A good SAWS Operator in such circumstances will look to offer a dismissed worker a second chance with another registered employer usually on a different crop. This will come with a letter to the participant from the SAWS Operator explaining that if their work does not improve then they may have to leave the scheme. During the 2 to 3 week period of training and induction a participant will have been given the opportunity to earn sufficient money to cover the costs of travelling to the UK and returning home. However in such circumstances that a participant has not then the operator and farmer together ensures that all participants leaving the scheme for whatever reason have the means to provide for themselves.