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REVIEW OF THE IMPACT OF ENDING EMPLOYMENT RESTRICTIONS ON BULGARIAN AND ROMANIAN NATIONALS ON THE AGRICULTURE AND FOOD PROCESSING SECTORS

RESPONSE BY THE ASSOCIATION OF LABOUR PROVIDERS TO THE MIGRATION ADVISORY COMMITTEE CALL FOR EVIDENCE

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Introduction

On 1 August 2012 the Minister for Immigration commissioned the Migration Advisory Committee (MAC) to undertake a [review of the impact of ending the restrictions on A2 workers](#). Specifically, the MAC has been asked the following question: The current transitional restrictions on A2 workers will be removed at the end of 2013 and the current sector-based schemes for A2 workers (covering agriculture and food processing) will then close. What impact across the whole of the UK will this have on the sectors currently covered by the sector-based schemes? The MAC has been asked to report to the Minister by 31 March 2013 and has issued a [Call for Evidence](#) with a deadline of 18 January 2013.

The Association of Labour Providers (ALP) represents over 270 labour providers, which together supply the majority of seasonal and agency workers to the agricultural and food processing industries. Most licensed Seasonal Agricultural Workers Scheme (SAWS) operators are ALP members. The ALP submission below is based on an analysis of labour supply over previous years and a number of discussions with ALP members including SAWS operators. Appended to the submission are two previous ALP papers on SAWS.

ALP Submission

1. There are nine Home Office approved SAWS operators; five are sole operators who recruit SAWS participants to fill their own seasonal worker need and four are multiple operators who recruit SAWS participants on behalf of UK farmers and growers.
2. A study by Precision Prospecting entitled "A study of employment practices in the agriculture and horticulture industries and co-located packhouse and primary food processing sectors" (2005), commissioned by Defra estimated that labour providers provided an average of 100,000 workers a month to this sector.
3. The Seasonal Agricultural Workers Scheme (SAWS) currently provides for 21,250 Bulgarian and Romanian nationals (A2 workers) to be supplied into agriculture.
4. The Home Office review of the scheme in 2002 stated:
"5.1.1 Farmers and growers find it increasingly difficult to recruit resident workers to meet their seasonal labour needs. Low unemployment levels and the short-term, manual nature of seasonal work that requires long hours and is weather dependent makes it difficult for farmers and growers to compete with other industries for labour."

5.1.7 The SAWS is widely seen as an essential source of seasonal labour for the agriculture industry. It provides reliable and flexible labour which farmers and growers know in advance they will receive in time for planting and harvesting and can plan their activities accordingly. Additionally, in an industry where a considerable amount of illegal working exists, farmers and growers are reassured that the SAWS labour is legitimate.”

5. The intervening years since the 2002 Home Office review have seen a number of developments to the seasonal agricultural labour supply market, notably:
 - There is significantly less illegal working in the agricultural sector. This has come about through the increase in availability of legal migrant workers, regulation of labour supply through the Gangmasters Licensing Authority and social compliance auditing of illegal working through the retail supply chain.
 - There has been a significant increase in the legal migrant worker applicant pool. This has been predominantly through A8 workers, initially Polish but in recent years more commonly Lithuanian, Latvian and Slovakian workers. In certain areas of the country the seasonal agricultural workforce has a higher proportion of Asian workers, particularly of Indian and Pakistani and more recently Nepalese origin.
 - Despite changes in the economic climate, indigenous British resident workers have tended not to apply for seasonal agricultural work with farmers and growers. There are push and pull factors which impact this:
 - i. The work is perceived as hard and unpleasant. Work is not guaranteed. It is generally no longer viewed as an option by UK students and young people looking for work over the summer period.
 - ii. There are difficulties of integrating irregular working and benefits. We wait to see whether the proposed Universal Credit will impact on this.
 - iii. Recruitment is often by word of mouth amongst migrant communities.
 - iv. There is a continuing perception that British workers are less hardworking and less reliable than migrant workers.
6. There have been no reported significant labour supply shortages to the agricultural sector since April/May 2008. At that time, low levels of unemployment across Europe were aggravated by an early hot spell causing a surge in demand for labour and exacerbating a shortage that already existed. This resulted in some crops remaining unpicked. Regional shortages may occur from time to time and recently in late 2012 / early 2013, outside of the typical SAWS period, there have been reported shortages for cauliflower and broccoli cutting in Scotland and daffodil picking in Cornwall.
7. It is generally perceived, although with a degree of uncertainty, that with returning SAWS workers and a newly available labour supply market that there should be sufficient labour supply within 2014 and 2015 to source 21,250 more agricultural workers, from existing applicant markets and the newly available Bulgarian and Romanian workforce. Certain SAWS Operators express greater hesitation on this matter highlighting that there will be a need to recruit significantly more than 21,250 workers because turnover will be much higher. Staff retention will be lower because the A2 countries will use seasonal agricultural work as a stepping stone into more permanent and regular work.
8. The position after 2014 and 2015 is naturally less clear. With a seven year transitional period already having taken place informal and formal ‘grapevines’ networks will emerge rapidly whereby resident Bulgarian and Romanian communities inform themselves regarding work availability. Previous patterns of migrant worker behaviour would indicate

that this will lead to these nationalities being less ready to undertake seasonal agricultural work and to seek opportunities for more regular, longer term and less strenuous work.

9. There is concern amongst certain farming representatives regarding the seasonal labour supply situation for the 2016 harvest and beyond. As such there is a desire by them to retain a SAWS type scheme in the intervening years even on a very small scale. It is suggested that this be open only to agricultural students in countries such as Ukraine, Moldova, Belarus, Russia. The benefits of this approach are considered as:
 - An ability to increase quota levels should seasonal agricultural labour supply shortages appear in the years approaching 2020.
 - The model would be limited to agricultural students and thus be a “work experience” type scheme and not included on the UK’s net migration figures.
 - Such a scheme may well have economic benefits within the agricultural sector in strengthening ties and opening routes of collaboration between the UK and these nations.
 - If such a scheme is considered then there should be an open application process for operators wishing to run such a scheme.
10. SAWS workers placed on farms are not guaranteed work and are only legally permitted to work within SAWS on farms registered with Operators. It would not be entirely unexpected that if the Operator or farmer with whom they are placed cannot provide work then they will seek to earn money in other ways, illegal employment being preferable to no employment. The scale of this is not known, but it is probably not widespread.
11. Although there is an assumption that SAWS workers will return home at the end of their period of work the 2002 review identified the problem that: “5.7.1 There is no reliable and accurate data on the number of SAWS participants who breach their immigration status or overstay and work illegally in the UK. In the absence of embarkation controls it is not possible to accurately quantify this figure.” Since 2004 the numbers have been recorded and have been very small. Any future type scheme that might be considered should have a robust system for registration of return to home country.
12. SAWS labour generally provides greater flexibility to growers than the labour engaged directly or through a licensed labour provider. This benefit arises principally from the quality of candidates recruited where work restrictions exist and the “tied” nature of the SAWS scheme.
 - SAWS workers are restricted to working on SAWS only and cannot seek work outside of the scheme.
 - As is standard for the great majority of agency and flexible seasonal workers, SAWS contracts are normally structured so that the worker is only provided with and consequently paid for work when it is available.
 - Whilst accommodation is not mandatory, workers often rely on the SAWS operator and farmer for their accommodation as well as their job. SAWS workers living on site offers operational benefits in being able to respond very quickly to peaks and troughs in demand.
 - The flexibility of a ready workforce for when the crop ripens, during certain picking windows of the day and to respond to varying retail orders makes the SAWS scheme particularly suitable for horticultural production.

13. The removal of the SAWS scheme will undoubtedly drive a change in seasonal labour recruitment practices, particularly for those farmers and growers that have become used to relying heavily on using SAWS workers:

- Some labour providers are already modifying their business processes to offer fixed fee recruitment models to farmers which mirror the SAWS charging structure. Others are exploring new labour supply channels within Bulgaria and Romania.
- There will continue to be a growth in the Harvest Contract Management model where the farmer outsources both the supply of pickers/cutters/harvesters and the supervision of this operation to a specialist labour/service provider in return for a fixed fee per tonne. Where this works well it offers opportunities for greater margins for the labour/service provider and increased certainty and security for the farmer.
- Some farmers and growers will seek to become employers of choice as they strive to maximise the percentage of seasonal “returners”. There are significant economic and operational benefits in maximising the number of workers that return season after season including reduced recruitment, induction and training costs and higher picking efficiencies.
- In becoming “employers of choice” farmers will seek to improve standards of accommodation provision; supervision and opportunities for progress. The abolition of the Agricultural Wages Order will allow greater flexibility of structuring terms and conditions to meet particular circumstances.

14. In summary:

- It is anticipated that even without a SAWS type scheme that there will be sufficient seasonal agricultural labour supply in 2014 and 2015. The position from then on is less clear.
- In order to mitigate risk there is the option to retain a very small scale agricultural student work experience type model which can be ramped up if necessary.
- New seasonal agricultural recruitment practices will emerge in a post SAWS market.
- In order to allow farmers, growers and labour providers the maximum opportunity to plan successfully for the 2014 season an early decision on the future of SAWS is needed.

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.

Appendix 2

Position paper: Seasonal Agricultural Workers Scheme (SAWS) – January 2005

Introduction

1. Labour providers are the main source of unskilled workers for the agriculture and fresh produce trades, providing at any one time over 100,000 workers. A further 25,000 workers are provided through SAWS. This paper examines the interrelationship between the two sources of employment and raises some issues which call for a response from Government.

SAWS – basic facts

2. SAWS dates back to the late 1940s and is basically a scheme to provide cheap seasonal labour, in the form of foreign students, for farmers.

3. To qualify for the scheme workers must live outside the European Economic Area and be in full time education. The period of work is between five weeks and six months and workers are expected to leave the country at the end of their period of employment. An annual quota (25,000 for 2004 and 16,250 for 2005) for the scheme is fixed; most applications come from agricultural students and are made through universities.

4. A small number of licensed operators run the scheme in the UK. They recruit workers and place them in farms. Workers cannot change employment without the agreement of the Operator.

5. The position on tax is unclear. The general position is that workers pay income tax the moment they start working. It is understood that SAWS workers do not begin paying tax until they reach the tax threshold and then they pay a reduced rate. SAWS workers are also exempt from payment of National Insurance contributions if they are studying an agricultural related subject in their home country.

6. There are nine operators. Two provide workers for farmers in specific areas (north Cambridgeshire, and Staffordshire and Shropshire) and five recruit for their own labour only. The remaining two, Concordia and HOPS, both charities, recruit for farmers throughout the UK.

The rationale for the scheme

7. The basic rationale for the scheme is that farmers need it otherwise they would not have a sufficient supply of seasonal labour. The Home Office review of the scheme in 2002 commented:

“5.1.1 Farmers and growers find it increasingly difficult to recruit resident workers to meet their seasonal labour needs. Low unemployment levels and the short-term, manual nature of seasonal work that requires long hours and is weather dependent makes it difficult for farmers and growers to compete with other industries for labour.

5.1.7 The SAWS is widely seen as an essential source of seasonal labour for the agriculture industry. It provides reliable and flexible labour which farmers and growers know in advance they will receive in time for planting and harvesting and can plan their activities accordingly.

Additionally, in an industry where a considerable amount of illegal working exists, farmers and growers are reassured that the SAWS labour is legitimate.”

8. In short, the rationale is that local residents do not want to do the work and the only other option is illegal working. The scheme therefore provides a double benefit – cheap labour for the farmer and reduced illegal working.

Issues

9. The first issue is whether the rationale for the scheme stands up to scrutiny. Labour providers are a source of cheap workers and find themselves competing in some markets against SAWS Operators. 50% of workers in the scheme in 2002 were from the EU Accession States and the 2002 review reported demand much higher than the number of places available. Logic would therefore suggest that after 1 May 2004 the scheme would be unnecessary because there would be no limit to the number of workers, students or otherwise, who could come to the UK from the Accession States. The 2002 review took a different view:

“5.1.6 The impact of EU accession on the SAWS and the demand for seasonal labour within the UK agriculture in general is difficult to predict. It is expected that as countries accede nationals from those states will seek work in other, better paid industries, and farmers and growers will need to look to other parts of the world to meet their demand for seasonal labour. An implication of this will be the additional travel costs incurred in recruiting SAWS participants.”

10. Labour providers have no evidence that nationals from the Accession States are unwilling to work in agriculture and indeed are placing thousands of workers from the Accession States. The quota has been cut by only 35% in 2005 from 25,000 to 16,000 to reflect the enlarged EU. If SAWS was abolished tomorrow labour providers would have no difficulty in providing 16,000 more workers, mainly from the Accession States, on terms identical to those for the SAWS workers other than the tax benefits.

11. The second issue is whether the scheme represents unfair competition to labour providers through the tax benefits. The view of labour providers is that it does. They have to pay the minimum wage from which they must deduct tax and national insurance contributions, and in addition they have to pay the employer's national insurance contribution. In other words with the agricultural minimum wage at £5.40 they pay the worker, after deduction of tax and national insurance contributions, (above the 10% band and the lower income limit for NI contributions) £3.62 and have to pay £0.40 in NI contributions. By contrast, a SAWS worker receives £5.40 and the farmer pays nothing on top. It may be argued that the tax point is not valid as a worker not on SAWS could reclaim the tax if he worked for only six months. However, this ignores the psychological benefit of receiving £5.40 immediately rather than £3.62. It also ignores potential abuse.

12. Although SAWS workers are "expected to return home" at the end of their period of work there is no means of ensuring that they do so and no data on the number who do not return. The 2002 review identified the problem:

"5.7.1 There is no reliable and accurate data on the number of SAWS participants who breach their immigration status or overstay and work illegally in the UK. In the absence of embarkation controls it is not possible to accurately quantify this figure.

5.7.2 Currently the Operators and their farmers and growers are expected to report SAWS participants who abscond or overstay, but once the participant leaves the farm at the end of their SAWS period it is not completely possible to be sure they have exited the country.

5.7.3 There is evidence that some SAWS participants abuse the European Community Association Agreements (ECAA) which allow in-country East European nationals to remain in the UK for one year provided they are in self-employment. Some SAWS participants use this opportunity to extend their stay and undertake employed work only."

13. SAWS workers are probably well placed to join the large numbers of agricultural workers in the cash economy, ironic in that one of the justifications for the scheme is that it is alternative to illegal working. There is an inherent problem in that the farmers with whom SAWS workers are placed cannot guarantee employment but SAWS workers are not permitted legally to work for anyone else. Not surprisingly, if their farmer cannot provide work illegal employment is preferable to no employment.

14. The final issue is whether a scheme which is basically **bonded labour** is acceptable. SAWS workers are not free to change jobs but must work either for the Operator only or for the farmer to which they are allocated. They are dependent on the SAWS operator and the farmer for their accommodation as well as their job. Given the accusations that are made against gangmasters it is perhaps ironic to find, in the section of the 2002 review dealing with abuse, the following passage:

"5.7.4 Legal, ethical and practical considerations make the use of financial bonds, the withholding of passports and the requirement that participants purchase a return air ticket problematic."

Questions for government

15. This brief analysis leads to a number of questions to which a government response is needed:

- On what basis is it argued that SAWS provides an essential supply of labour when labour providers states that they can easily supply the same number of legal workers on the same terms (other than the tax benefits)?
- Why has the quota been cut by only 35% when the Accession States have provided 50% of participants and there has been an excess demand for places in the scheme from those states?
- What is the justification for treating SAWS workers differently from other temporary workers in respect of tax and national insurance?
- Does the scheme provide unfair competition to labour providers?
- Why are there no checks to ensure that workers leave the country at the end of their period of employment? Given that most workers are recruited from a smallish number of universities why are checks not made with those universities?

16. There is a final general point. There is virtually no data about the scheme. The 2002 review has just a few statistics and there is no breakdown of workers supplied by Operator or by country of origin or by age. The tax position is also unclear. It would be helpful if comprehensive data was made available so as to facilitate analysis of the scheme.