



Home Office

## **THE SEASONAL AGRICULTURAL WORKERS' SCHEME**

**Final Regulatory Impact Assessment on  
the proposed business and financial  
arrangements**



**September 2003**

## **FINAL REGULATORY IMPACT ASSESSMENT**

### **CHANGES TO BUSINESS AND FINANCIAL ARRANGEMENTS UNDER THE SEASONAL AGRICULTURAL WORKERS' SCHEME (SAWS)**

#### **Objective**

1. The objective of the proposed regulation is to implement the revised business and financial arrangements under the Seasonal Agricultural Workers' Scheme (SAWS), and which continue to ensure farmers and growers are provided with a cost effective and accessible source of SAWS labour.

#### **Background**

2. The SAWS was reviewed in 2002 and following Ministerial agreement across Government the recommendations arising from that review were announced on 27 November. In light of those recommendations, Work Permits (UK) has assessed the business and financial arrangements of the scheme with a view to making these more transparent, and fair, and improving the accountability of stakeholders.

3. Additionally, a commitment exists for the Home Office to levy a charge for its consideration of the issue the employment document permitting entry on to the scheme. The reasons for proposing this charge are as follows:

- The SAWS specifically benefits farmers and growers in the UK and yet the burden of funding the administration of the scheme by the Home Office is borne by all UK taxpayers and businesses. The introduction of charging will mean that those who benefit from the service pay for the service.
- Charging has already been successfully introduced to the work permit arrangements, and in applications for leave to remain. These have been widely supported and to not charge under the SAWS arrangements would be viewed as an anomaly.
- The SAWS review identified that potentially the demand for this scheme among farmers and growers will increase further in the future. Expansion of the scheme may therefore place an increasing cost on the Home Office, and therefore the taxpayer, in the absence of directly charging those who benefit.

#### **Risk Assessment**

4. To maintain the current arrangements within the SAWS would be to leave the scheme open to abuse and, potentially, the exploitation of scheme participants. The current scheme Operators are generally credited as having delivered the scheme effectively and largely with regard to the welfare of participants. However, insufficient safeguards are built into the scheme to ensure this continues, particularly given that a recent tendering exercise to appoint Operators may lead to new organisations becoming Operators. For example, there is no systematic recording of participant data by Operators and which the Home Office can readily access, Operators have complete discretion over who and what they charge, and there are few laid down requirements as to the information Operators are obliged to provide their participants, or of the checks they are expected to make on their farmers. Recent

consultations identified that significant concern exists among stakeholders in agriculture at the levels of illegal working and exploitation in the industry and therefore arrangements need to be set in place to ensure the risk of such abuse within the SAWS is minimised.

5. The main risk arising from the proposals to meet the policy objective is that the scheme is seen by farmers to be too costly and bureaucratic to meet their seasonal labour needs and, in the absence of sufficient numbers of available resident workers, choose to recruit illegal workers. These may be recruited either directly or through intermediaries, and may be either resident workers claiming unemployment benefits while working, or illegal foreign workers.

6. The consultation on the proposals identified that the majority of respondents, many of whom are farmers or their representatives, did not view these charges as being too costly or bureaucratic.

7. Additionally, the extending of the period during which the scheme operates to include the whole year has been well received within the farming community and current Operators have reported a positive interest in taking part in the scheme particularly by those employers previously excluded.

8. The greater monitoring of the SAWS by the Home Office may identify a higher number of breaches of legislation and other regulation than previously known, for example of the Agricultural Wages Orders, or in standards of accommodation provided for SAWS workers. This may have a direct cost impact on farmers and growers in conforming to these minimum requirements, or in their insurance premiums to cover any improved accommodation.

9. The reaction of gangmasters to the revised SAWS arrangements, including a potentially greater access to SAWS labour, may lead to unforeseen consequences, though as yet it is not possible to predict what these may be.

10. The expansion of the European Union to include ten accession countries, many of who are participant source countries for the SAWS, may reduce demand for the SAWS by farmers and growers. However, the benefits of access to an enlarged resident labour force may be diminished by the ability of such individuals to freely move into other, better paid and more attractive sectors outside of agriculture. The consultation identified a very mixed response to the impact of EU enlargement and this remains an issue of concern to many stakeholders.

11. A tendering exercise is currently taking place to appoint Operators to administer the SAWS from January 2004. Operators have not previously been required to tender and by opening up the scheme to other organisations it is envisaged the benefits of SAWS will be marketed even further among farmers by those selected. While there is a risk that in opening up the scheme in this way some appointed Operators may fail to properly undertake their contracted duties, the experience to date of using Operators to administer the scheme has been very successful. Moreover, appointed Operators will be regularly monitored by the Home Office to ensure they are meeting their contractual obligations.

## **Options**

12. Three options to meeting the policy objective exist:

### Option A: Do not implement any changes

13. This option involves continuing to use work cards as the document permitting entry on to the scheme and which the Home Office does not charge for consideration of issue. All business and financial arrangements remain unchanged regardless of the recommendations of the SAWS Review.

### Option B: Retain the use of work cards and implement the proposed revised business and financial arrangements.

14. This option involves retaining the use of work cards as the document permitting entry on to the SAWS, but with a charge to be levied by the Home Office for consideration of the issue of each work card and with the intention of recouping its administrative costs. Operators would receive the work cards in bulk and be responsible for completing the personal details of the recipients on each work card. Additionally, this option requires all scheme Operators to implement changes to their business and financial arrangements in line with the outcomes of the SAWS review, and to improve the accountability and transparency of the scheme. This includes:

- All Operator administrative costs to be borne by the employers, and not the participants.
- More structured recording of participant data by Operators on IT software supplied, and regularly gathered, by the Home Office.
- Better and more consistent information provided to participants of the scheme by Operators and prior to their scheme entry.
- Clearer, and more transparent arrangements, for scheme monitoring on the part of the Home Office and the Operators.

### Option C: Introduce the use of work permits and implement the proposed revised business and financial arrangements.

15. Option C is the same as option B except that a work permit would be the document permitting entry to the scheme, and, as with the normal work permit arrangements, these documents would be issued for each named individual by Work Permits (UK), and at the request of an Operator. The Home Office would levy a charge for the consideration of the issue of each permit.

## **COSTS AND BENEFITS**

### Option A – Benefits

16. Option A would deliver a scheme providing benefits to farmers and growers as now but without the additional cost burdens arising from changes to the administrative and financial arrangements, or the charges levied by the Home Office for its consideration in the issue of the work cards/permits.

## Option B – Benefits

17. The issue of work cards in bulk to scheme Operators makes administration on the part of the Home Office simpler and cheaper than would otherwise be the case. The cost levied by the Home Office for consideration of the issue of work cards is therefore less. The Operators also benefit by having the flexibility to manage their use of the work cards in a way that is most responsive to the needs of the farmers.

## Options B and C - Benefits

18. Those benefiting directly from the scheme would pay for the service and not those businesses and taxpayers who do not directly benefit. The income raised would directly relate to the cost of providing the service ensuring this was maintained, and improved, in line with the SAWS review recommendations.

19. The introduction of charging would free up further Government resources to be invested elsewhere.

20. The work card/permit facilitates the inclusion of a picture of the participant on each document which assists in the easier identification of individuals by immigration and enforcement officers. The redesigned work card/permit also incorporates improved security features. This helps to reduce fraud and minimises processing times prior to entering, and while working, in the UK. The disruption to business is therefore reduced.

21. In passing on the administrative costs of the Operators to the farmers and growers who directly benefit, businesses are not able to pass on their recruitment costs to those they employ. To allow otherwise would give employers recruiting under SAWS a competitive advantage over those who choose to recruit from within the resident labour force. It would also give rise to an inconsistent approach to charging among those Operators recruiting on behalf of other farmers and who are subject to the Employment Agencies Act 1973. This prohibits Operators that come within scope of the act to charge individuals for their services but some organisations, such as charities, are exempt.

22. The greater transparency and consistency afforded to the scheme by requiring clear and standard information to be provided by Operators and employers, including written information that clarifies responsibilities and regular monitoring inspections, will provide greater reassurance to stakeholders. This will maintain the integrity of the scheme as a legitimate and responsible source of agricultural labour.

## **Costs**

### Option A

23. There is no change to the cost of business (Operators and employers) of £2m.

## Option B

24. Under option B the Home Office charge for consideration of the issue of each work card will be £12.00. If work permits were to be the documents used the charge per permit would be £25.00, reflecting the additional staff resource required in processing work permit applications. These charges are based on the full direct costs of the business team involved in administering the SAWS plus the overhead costs within Work Permits (UK), IND and the Home Office, divided by the anticipated quota for 2004. The calculations have been based on existing Treasury policy and the rules on charging that limit to achieving cost recovery only. Operators will be permitted to seek reimbursement of the work card cost from scheme participants and employers may not be obliged to pay for some or all of the work card charges. Therefore, the total cost to business for work cards will be £300k assuming a quota of 25,000 places.

25. The work card option is, in part, cheaper because the Operators will be undertaking work that the Home Office would otherwise do under the work permit option. Specifically, considering and deciding individual applications against the scheme eligibility criteria; recording the data on IT required by the Home Office; completing and issuing the work card with a photograph of the participant included; and updating the participant record after the initial consideration. It is estimated this will take no more than a total of 12 minutes per application to do. Based on a typical salary of £20 per hour for an administrative assistant to undertake such tasks (ref. Final RIA: Charging for Work Permits), and on a total scheme quota of 25,000 places, the additional costs to Operators of undertaking tasks that might otherwise have been performed by the Home Office is £100,000.

26. The current tendering exercise will appoint organisations to be Operators on the basis of the “value for money” their applications represent. It is anticipated the competition this will bring will help to reduce the administrative costs incurred by Operators and which is passed on to the farmers and growers. Until that process is complete it is not possible to identify the actual charges Operators will make on the farmers and growers for participation on the scheme. The current Operators charge their participants between £10.00 and £80.00 each for their work card, and to cover their administrative costs.

27. Under the revised arrangements additional administration will be required in, for example, providing participants with information detailing their rights and responsibilities prior to entering the UK; recording participant data on IT and in a manner prescribed by the Home Office; making payment in return for the SAWS documents and recovering this cost from participants and/or farmers; and assistance to the Home Office in its greater monitoring and evaluation of the scheme. To varying extents Operators already undertake some of this work. It is therefore estimated the additional work arising will be no more than 10% above that currently undertaken. The additional 10% in costs to business based on a quota of 25,000 places will range between £25k and £200k.

28. The potential increased total costs to business of option B is estimated at between £425k and £600k or, based on a quota of 25,000 places, between £17 and £24 per worker.

### Option C

29. Were option C to be chosen, the potential increased costs to business would have been at between £650k and £825 or, based on a quota of 25,000 places between £26 and £34 per worker. The difference in costs between the two options reflects the differing Home Office charge for a work permit (£25 per permit) and 10% increase in Operators costs.

### **Costs to a typical business**

30. The costs of taking part in the SAWS can vary greatly and therefore it is not possible to identify the total costs to a typical business. Depending on the farm, SAWS participants employed can vary from a few to over a thousand in any given year. Participants may also be recruited for quite differing lengths of time depending on the agricultural activities they are required to undertake.

31. Under the current scheme arrangements Operators recoup the majority of their administration costs by charging the participants they recruit. However, some Operators do levy charges on their farmers and growers and by averaging out these charges in line with the quota allocations one can conclude that in the main, the current charge levied on farmers and growers by those Operators that do charge is no more than an extra £10 per worker supplied, This figure is in addition to the estimated £15 to £104 per participant, and as detailed in the table above.

### **Equity and Fairness**

32. No particular groups or individuals will be disproportionately impacted. In having a tendering exercise to appoint Operators of the scheme some organisations may be adversely affected should they not be selected. However, the purpose of the tendering process is to open up the scheme to any organisation that wishes to be considered for Operator status. By evaluating that interest objectively, and on the basis of the “value for money” their bids offer, greater fairness is being built into the process for selecting Operators.

### **Small Firms Impact Test**

33. The Small Business Service, National Farmers’ Union and over 30 small to medium sized farmers and growers were directly consulted on the review of the SAWS, and the subsequent proposed changes to the SAWS arrangements. This is in addition to many other employer representative bodies and stakeholders within agriculture.

34. There were less than 10 responses from small businesses to each of the consultations, though organisations representing the interests of small farmers, such as the National Farmers’ Union, did respond to one or both consultations. Their responses confirmed the importance of the SAWS and of its expansion, and although

some of the responses held reservations on passing all the administrative costs of the Operators of the scheme on to the farmers and growers who directly benefit, overall there was considerable support for the changes that have been recommended.

35. There are approximately 654 farmers and growers who currently participate in the SAWS and are small businesses, employing around 8,753 SAWS participants during the year. This compares to a total of approximately 34,500 farmers and growers that are classified as small businesses in England and Wales alone (ref DEFRA census 2001). As SAWS is one of a number of methods by which farmers and growers may meet their seasonal labour needs, use of the scheme by small business is optional and therefore the impact of the changes on small businesses is very limited as a whole.

### **Competition Assessment**

36. The market affected by this regulation is the farmers and growers in the UK that have an unmet demand for seasonal labour. The competition filter has been completed and no adverse impact on competition can be identified as a result of this regulation.

37. Introducing a consistent approach in charging by Operators will ensure that competition is not distorted between the Operators themselves, and between Operators who source SAWS labour purely for their own needs and other organisations that source seasonal labour from the resident labour market only. Moreover, though Operators will not be required to levy identical charges on farmers and growers, the Home Office will assess and select tender bids to become Operators on the basis of the “value for money” they offer.

### **Enforcement**

38. Farmers and growers will be subject to inspections by agencies (for example, the Agricultural Wages Board) that have an interest in ensuring legislative and regulatory requirements are maintained, regardless of whether those impacted are resident seasonal workers or SAWS participants.

39. As organisations providing, for example, immigration advice and job seeking services, Operators of the scheme will also come within scope of existing legislation and regulation and will therefore be subject to those enforcement agencies with a remit to police these matters.

40. A formal contractual relationship will exist between the Operators and the Home Office and should any Operators fail to comply with the requirements set out in their contract, the Home Office may opt to terminate that contract. Similarly, Operators are contractually required to establish formal written agreements with those farmers and growers they represent, and which set out the terms on which SAWS participants are supplied. Failure to meet those terms can result in Operators terminating their agreements, and the Home Office will monitor such arrangements as part of its contract management.

## Consultation

41. The consultation paper was issued to a total of 134 organisations and individuals, and placed on websites. Of those issued a consultation paper direct, 14 were organisations representing farmers, growers, and agricultural workers, 9 were public bodies and/or Government Departments, and 48 were farmers and growers in their own right of which at least 35 are estimated to be small or medium sized growers.
42. 31 written submissions were received during the course of the consultation of which 11 were from farmers and growers, and 4 were from representative organisations with an interest in agriculture.
43. The vast majority of respondents supported the proposed changes and in particular the measures concerning the improved record keeping, monitoring and evaluation; measures to protect participant rights and welfare; and the pre and post entry business processes.
44. To the question on whether the proposed financial arrangements are fair and transparent, five respondents specifically stated No, while a further three expressed concerns at not being able to pass greater cost on to scheme participants. These respondents felt that individuals should contribute towards the Operators administrative costs incurred in recruiting them, and/or for those services that they directly benefit from, such as advice and welfare. Improved commitment, offsetting some of the additional costs employers incur when recruiting SAWS participants, and recognising the specific benefits participants receive themselves through involvement in the SAWS were cited as reasons for passing Operator administrative costs on to participants. The majority of respondents though considered the financial proposals to offer a fair and transparent mechanism for taking part in the scheme.
45. Only two respondents specifically stated a preference for retaining work cards, citing their greater flexibility and cost effectiveness. However, there were no objections expressed to using work cards, and no supporting comments for the option to use work permits. Consultees may not have had strong views on the use of either document though in view of the overall support for the proposals, which included the use of work cards, it is reasonable to assume that work cards are the preferred option. No objections were raised to the Home Office seeking to recover its costs by charging, perhaps because reimbursement for this cost may be sought from either the employer or the participant. However, the Transport and General Workers' Union did express concern that ultimately the Home Office charge would fall on scheme participants.
46. The proposed quota setting timetable has been brought forward in response to concerns identified in the consultation that the setting and review of quotas would not be sufficiently early to meet the needs of most farmers and growers.
47. The area of most concern to consultees is the impact of European Union accession on the supply of seasonal labour to farmers and growers and whether the changes to the SAWS will be effective in enabling Operators to continue to meet the needs of those employers. Accession country nationals currently make up the majority

of SAWS participants but stakeholders are uncertain such people will continue to seek work in UK agriculture after accession, and are unsure about the sourcing of labour from countries further afield. A further review of the SAWS within three years will help to properly assess the impact of EU accession.

### Monitoring and Review

48. There is a commitment to review the impact and costs of the changes to the SAWS, and on those farmers and growers who directly benefit, within the coming three-year period. An earlier review will take place if this is felt necessary.

49. Contracts between the Operators and the Home Office will be for a period of three years, with the option to extend for a further two-year period subject to mutual agreement by both parties.

50. Regular and structured monitoring of the contractual arrangements will take place by the Home Office of the Operators. Part of this monitoring will assess that the Operators are making charges in line with that agreed with the Home Office, and that they are administering the scheme as required under the revised arrangements and set out in their contracts. The Operators will also be required to undertake regular monitoring of the farmers and growers they represent, the details of which will be set out in their contract with the Home Office and which the Home Office will also monitor.

51. Should the Home Office identify that the revised arrangements add significant cost and bureaucracy on business, these will be reassessed and should any significant change be made impacting on business, a further RIA will be provided.

### Summary and Recommendation

52. The table below summarises the additional costs on farmers and growers:

	Option A: Retain present system (per annum)	Option B: Work Cards 25,000 quota assumed (per annum)	Option B: Work Permits 25,000 quota assumed (per annum)
Existing cost to business.	£2m	£2m	£2m
Increase in administrative costs to Operators @ 10%	-	£25k - £200k	£25k - £200k
Work card charge @ £12 per card	-	£300k	
Additional administration for Operators under option B @ £4 per card	-	£100k	
Work Permit charge @ £25 per permit			£625k
<b>Total additional cost to business</b>	-	<b>£425k -£600k</b>	<b>£650k - £825k</b>
Total additional charge per participant employed		£17 – £24	£26 - £34

53. Option B is recommended as the preferred option at a cost to business of between £425k and £600k per annum.

**Declaration**

52. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

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Date .....

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