

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

For further information contact:

Video Conference via Zoom

P Gareth Williams

Meeting date: 16 May 2022

Committee Clerk

Meeting time: 13.30

0300 200 6565

SeneddLJC@senedd.wales

Remote – Supplementary pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered

13.40–13.45

4.2 SL(6)190 – The Agricultural Wages (Wales) Order 2022

(Pages 1 – 5)

Attached Documents:

LJC(6)–14–22 – Paper 21 – Report

LJC(6)–14–22 – Paper 22 – Welsh Government response

6 Papers to note

13.50–13.55

6.6 Correspondence from the Counsel General and Minister for the Constitution: The Queen's Speech 2022

(Pages 6 – 13)

Attached Documents:

LJC(6)–14–22 – Paper 23 – Letter from the Counsel General and Minister for
the Constitution, 13 May 2022



LJC(6)-14-22 – Paper 24 – Written Statement by the Counsel General and
Minister for the Constitution, 13 May 2022

LJC(6)-14-22 – Paper 25 – Letter to the Counsel General and Minister for the
Constitution, 12 May 2022

SL(6)190 – The Agricultural Wages (Wales) Order 2022

Background and Purpose

The Agricultural Wages (Wales) Order 2022 (“the 2022 Order”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The 2022 Order revokes and replaces the Agricultural Wages (Wales) Order 2020 (“the 2020 Order”) with changes which includes a new grading structure, and minimum hourly rates of pay, for agricultural workers.

Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(iv) - that it appears to have retrospective effect where the authorising enactment does not give express authority for this

The Order was made on 31 March 2022 and comes into force on 22 April 2022. However, the provisions of the Order apply retrospectively, from 1 April 2021. The Agricultural Sector (Wales) Act 2014 does not appear to provide express authority for this. The Welsh Government’s Explanatory Memorandum states as follows:

The provisions within the Order are intended to apply retrospectively to 1 April 2021. The Panel were of the view this would recompense those agricultural workers who had expected an increase in their hourly wage from 1 April 2021, as was proposed in the Panel’s targeted consultation of autumn 2020.

The Welsh Government’s position is that the retrospective application of the provisions of the Order has been included to increase the wages of workers who had expected an increase in April 2021. However, there is no explanation in the Explanatory Memorandum for the delay between the Panel submitting a revised draft Order on 21 December 2021, and the making and laying of the Order (on 31 March and 1 April 2022 respectively). A second public consultation had taken place prior to the submission of the revised draft, in October-



November 2021. Some three months elapsed between the submission of the revised draft, and the making of the Order.

In respect of the retrospective application of the Order, the Explanatory Memorandum states as follows:

The intention of the Panel was to have the new Order in force on 1 April 2021, to coincide with increases to the National Living Wage (NLW) and National Minimum Wage (NMW) and avoid a transitional period during which the NLW/NMW would override the Agricultural Minimum Wage (AMW) levels. However, the scale and nature of the changes necessitated referral back to the Panel for clarification of a number of policy and legal matters. In response, the Panel made changes to their draft proposals. Some of these changes were sufficiently different so as to require a second public consultation. This took place between 20 October and 19 November 21. The Panel subsequently submitted a revised draft Order on 21 December 2021 and requested that the Order be made with retrospective effect to recompense those agricultural workers who had expected an increase in their hourly wage from 1 April 2021, as was proposed in the Panel's targeted consultation of autumn 2020.

Following careful consideration, Welsh Ministers approved the draft Order and request for retrospective effect. At present, agricultural workers' wages in Wales are subject to the minimum rates specified by the Agricultural Wages (Wales) Order 2020, except for minimum rates in the Order which fall below the NMW and NLW.

2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation.

Section 3 of the Agricultural Sector (Wales) Act 2014 concerns agricultural wages orders. Section 3(5) provides that "no minimum rate of remuneration may be specified in an order under this section which is less than the national minimum wage". The Order was made on 31 March 2022, came into force on 22 April 2022, but took effect from 1 April 2021. On 1 April 2022, the National Minimum Wage and National Living Wage were increased. The minimum rates of pay specified in Schedule 1 to the Order are in some cases lower than the national minimum wage rates from 1 April 2022, although they are equal to or higher than the national minimum wage rates applicable on 1 April 2021. The Explanatory Memorandum accompanying the Order does not explain the rationale upon which the Welsh Government considers that section 3(5) of the Act has been complied with, as the Order specifies minimum rates of remuneration which are less than the national minimum wage from 1 April 2022. Further information would be helpful to understand the Welsh Government's position.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.



3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Order introduces a new grading structure for agricultural workers. The minimum rates of pay for agricultural workers, by grade, are set out in Schedule 1 to the Order. These take effect from 1 April 2021. The National Living Wage, and National Minimum Wage have been increased with effect from 1 April 2022. These increases in some cases are higher than the minimum rates provided for by the Order. In some cases, this has the result of removing or lessening the impact of the graded pay rates, which reward more experienced or qualified workers. For example, a Grade A4 Agricultural Development worker aged 23 or over according to Schedule 1 to the Order would receive £8.91 per hour. However, from 1 April 2022, the National Living Wage (NLW) would uplift this amount to £9.50 an hour. A 23+ year old Grade B4 agricultural worker would receive a minimum of £9.19, again uplifted to £9.50 an hour. A 23+ year old Grade C Agricultural worker would also receive the NLW rate of £9.50, as their Schedule 1 minimum pay of £9.47 is also uplifted. As such, there is no present pecuniary reward to a worker in this age category to being a Grade C4, as opposed to an A4 worker. This appears to act as a disincentive to progression in the short term. Some agricultural workers may be on a higher rate of pay if they are protected by the protection of pay provisions in article 15, following the introduction of the new grading structure. The Explanatory Memorandum does not explain when a further Order is intended to be made. As such, it is difficult to ascertain when this issue may be ameliorated.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Standing Order 15.4 provides that:

"Any document laid or business tabled by the Presiding Officer, the Commission, the government, any committee or the Clerk, must be laid or tabled in both English and Welsh, so far as is appropriate in the circumstances and reasonably practicable."

The Explanatory Memorandum is not available in Welsh. Can the Welsh Government explain the reason for this?

Welsh Government response

A Welsh Government response is required in respect of points 1-4, above.

Committee Consideration

The Committee considered the instrument at its meeting on 9 May 2022 and reports to the Senedd in line with the reporting points above.



Government Response: The Agricultural Wages (Wales) Order 2022

Technical Scrutiny Point 1: The Welsh Ministers are satisfied that the retrospective effect of The Agricultural Wages (Wales) Order 2022 is lawful. The Welsh Ministers are satisfied that the instrument is compatible with Article 1 Protocol 1 of the European Convention on Human Rights. The instrument is considered to strike a fair balance between the rights of individuals and the general interest and is proportionate.

The Welsh Ministers consider that the timescale between the Panel's submission of the revised draft Order on 20 December 2021 and the making and laying of the Order (on 31 March and 1 April 2022 respectively) is reasonable and did not require explanation within the Explanatory Memorandum.

Technical Scrutiny Point 2: There is a guidance note on the Welsh Government website which explains that the National Minimum Wage/National Living Wage rates increased from 1 April 2022¹. The guidance note includes a table setting out these uplifted rates and explains that these uplifted rates apply to the five new grades of agricultural worker and will continue to apply until a new Agricultural Wages Order is made or until they are superseded by further changes to the National Minimum Wages/National Living Wage. There is also a detailed guidance document which further explains this point².

Merits Scrutiny Point 3: It is noted that in some cases the increased rates for the National Minimum Wage/ National Living Wage which came into effect from 1 April 2022 exceed the minimum pay rates stipulated in the Order and have therefore superseded them. It is noted that, in the short-term, the minimum pay rates for Grades A4, B4 and C are the same.

The Panel are now finalising their proposals for the 2022/23 Order and will be submitting a draft Order for consideration by Welsh Ministers shortly. The proposed minimum pay rates in the 2022/23 Order, as consulted upon in January 2022³, will rectify this issue, as it is proposed that different rates of pay will apply to Grades A4, B4 and C.

Merits Scrutiny Point 4: The Welsh Government is committed to increasing the number of Explanatory Memorandum and Regulatory Impact Assessment for Statutory Instruments that are laid bilingually in the Senedd.

¹ <https://gov.wales/agricultural-wages-minimum-rates-pay>

² <https://gov.wales/agricultural-wages-guidance>

³ <https://gov.wales/terms-and-conditions-agricultural-workers-2022>

Standing order 15.4 of the Senedd requires all documents to be laid bilingually so far as is appropriate in the circumstances and reasonably practicable, and Standard 47 of the Welsh Language Standards (the statutory duties imposed on the Welsh Government by the Welsh Language Commissioner) requires us to consider the subject matter and the anticipated audience of certain documents to prioritise their translation. Under guidance provided by the Commissioner's office (in their Code of Practice on the Welsh Language Standards (No. 1) Regulations 2015), in prioritising these documents for translation at this time we considered issues such as whether the Regulations related to issues affecting the Welsh language directly, whether the Regulations were of great interest to Welsh speaking groups in particular, and whether a high proportion of the documents' audience would be Welsh speaking. As the Order is of a technical nature and will affect only an extremely small percentage of the population, the Explanatory Memorandum has not been deemed a priority for translation at this time.

Agenda Item 0.6

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

13 May 2022

Dear Huw,

Thank you for your letter of 12 May. As you are aware, on 10 May 2022 His Royal Highness the Prince of Wales formally opened the new session of the UK Parliament on behalf of Her Majesty the Queen, and in doing so outlining the UK Government's proposed legislation for the new session.

I have today published a written statement regarding the anticipated implications of the proposed legislative programme for the Senedd, as well as to provide updates on our engagement with the UK Government.

I am keen to ensure we continue to work collaboratively with the Senedd on legislative consent matters, and I hope you will welcome this early letter and the associated Written Statement in that spirit. I can confirm I will attend the Legislation, Justice and Constitution Committee on 20 June. I hope to have more information on the bills referred to in the Written Statement by then and I look forward to discussing further at that meeting.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

I am copying this letter to the Llywydd and other Committee Chairs.

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The UK Government's Legislative Programme**

DATE **13 May 2022**

BY **Mick Antoniw MS, Counsel General and Minister for the
Constitution**

On 10 May 2022, His Royal Highness the Prince of Wales formally opened the new session of the UK Parliament on behalf of Her Majesty the Queen. He outlined the UK Government's proposed legislation for the new session.

Our fundamental position is that primary legislation in devolved areas should normally be enacted by the Senedd. However, there can be some circumstances when it is sensible for provision, which is in the Senedd's legislative competence, to be included in UK Parliamentary Bills, with the explicit consent of the Senedd.

In October 2021, I wrote to the Senedd's Legislation, Justice and Constitution Committee outlining our principles for considering consent for devolved provisions in UK Bills. For example, we will consider using a UK Bill where the law could be changed more quickly than we could achieve such change through our own legislative programme or where it is sensible for the regulatory regime to be in step across England and Wales. We will continue to follow these principles.

The Welsh Government considers any proposal which might involve a UK Bill legislating in a devolved area very carefully. Early and effective engagement between Welsh Government and UK Government is an essential factor in enabling those considerations, and in turn, in enabling timely and informed legislative consent memoranda to be published to enable the Senedd to scrutinise such proposals.

Following discussions at the first Inter-Ministerial Standing Committee meeting on 23 March, I am encouraged that there has been some positive engagement between UK Government and Welsh Government officials on a number of Bills in the UK Government's legislative programme. I also welcome the positive engagement which is continuing to take place between my officials and the Senedd Commission in relation to the legislative consent process, which I hope will aid scrutiny of UK Bills.

I am mindful however that the last Parliamentary session resulted in a number of instances where the Sewel Convention was not respected. I am concerned about the lack of engagement on certain Bills and continue to believe that the Sewel Convention should be placed on a statutory and justiciable footing – this is the most appropriate way to protect our devolution settlement and safeguard the United Kingdom. I continue to call on the UK and Devolved Governments to work towards that goal.

Of the 38 Bills which the UK Government intends to bring forward in its Third Session of Parliament, some have already been introduced, whereas others will be at various stages of development. Our knowledge of the proposed provisions – and our engagement with the UK Government – varies from Bill to Bill; as does the extent to which provisions fall within devolved areas of competence or raise cross-border issues.

The UK Government had previously indicated to the Devolved Governments a set of 12 policy areas in which legislation of particular relevance to devolved interests might be included in its legislative programme. Our anticipation, therefore, has been that Bills in these areas may require an LCM, either because they contain, or are likely to contain, provision which is within the Senedd's competence, or because it modifies the Senedd's legislative competence. Information on these Bills can be found below.

Subsequent to the announcement of the UK Government's legislative programme, the Secretary of State for Wales made a Written Statement on 11 May referring to a total of 27 Bills that are likely to extend and apply in Wales. We have received only limited information on the other 15 Bills in this set.

The Welsh Government is seeking further information on this wider set of Bills, and indeed on the UK Government's overall legislative programme as a whole. Once information is available, all Bills will be assessed to determine whether the consent of the Senedd is required.

I look forward to sharing further information about relevant Bills and working with the Senedd on the legislative consent process throughout this new Parliamentary session.

The information on Bill provisions provided below draws upon information made publicly available by the UK Government.

1. Animal Welfare (Kept Animals) Bill

This Bill was introduced in the last Parliamentary session and makes provision relating to the welfare of kept animals including farm animals, companion animals and kept wild animals.

A legislative consent memorandum was laid in relation to this Bill on 22 June 2021, with a supplementary legislative consent motion laid on 7 January 2022 (and subsequently revised on 3 March 2022).

2. Brexit Freedoms Bill

The Bill will contain provision relating to retained EU law (REUL) including procedures for changing it. The Bill is expected to contain proposals for regulatory reform across a wide range of policy areas.

3. Non-Domestic Rating Bill

The Bill will be used to amend and clarify existing powers and certain parameters within the non-domestic rates system.

4. Energy Security Bill

The Bill will deal with a number of issues including carbon capture and storage, fuel supply, price tariffs and further energy related issues.

5. Bill of Rights

The Bill is likely to include proposals to revoke and replace aspects of the Human Rights Act 1998 with a Bill of Rights, and to reduce the role of the European Court of Human Rights.

The Human Rights Act is a fundamental aspect of the Senedd's legislative competence as legislation passed in the Senedd must be compatible with the Act.

6. Trade (Australia and New Zealand) Bill

The Bill will contain provision associated with the implementation of the UK's trade agreements with Australia and New Zealand, including in relation to procurement rules.

7. UK Infrastructure Bank Bill

The Bill will contain provision relating to the governance of the UK Infrastructure Bank.

8. Levelling Up and Regeneration Bill

The Bill will contain broad provision relating to a range of issues, including local government and planning.

9. Mental Health Reform Bill

The Bill will amend the Mental Health Act 1983 on issues including processes and treatment.

10. Online Safety Bill

This Bill was introduced in the last Parliamentary session and makes provision for and in connection with the regulation by OFCOM of certain internet services, communications offences, and connected purposes. A legislative consent memorandum was laid in relation to this Bill on 30 March 2022.

11. Procurement Bill

This Bill is intended to reform the current procurement regime.

The Minister for Finance and Local Government published a Written Statement about our approach to collaborating with the UK Government in this area on 18 August 2021.

12. Transport Bill

This Bill will include provision relating to railways, electric vehicle charge points and vehicle standards.

Mick Antoniw MS
Counsel General and Minister for the Constitution

12 May 2022

Dear Mick

Invitation to give evidence – 20 June 2022

You will recall that we had a very informative discussion ~~last September~~ which provided an early opportunity to hear from you on matters within your portfolio and to help set the scene as my Committee began its work in this Sixth Senedd.

As the first full year of the Sixth Senedd draws to an end we would like to invite you to attend our meeting on 20 June, from 1.00 – 2.30 pm, so that we may discuss key developments and issues within your area of responsibility since we last met. This meeting will take place on the Senedd estate, room location to be confirmed.

I would be grateful if you could confirm, at your earliest convenience, whether you will be able to attend. This session will help inform an annual report, which we intend to lay before the Senedd early in the summer recess.

In addition you will know that, this week in the UK Parliament, the UK Government's legislative programme for the forthcoming session was announced in the Queen's Speech. Following on from your letter to us of 1 March 2022, we would be grateful if you would provide your initial assessment of the Bills included within the announcement which you consider will require legislative consent memoranda to be laid before the Senedd. Furthermore, it would be helpful if, as part of that assessment, you could confirm which Bills the Welsh Government is seeking, or may seek, provision for Wales in devolved areas. We would welcome receipt of this information by 25 May so that it may be used to inform our work planning.

Yours sincerely,



Huw Irranca-Davies
Chair