

SL(6)332– The Agricultural Wages (Wales) Order 2023

Background and Purpose

The Agricultural Wages (Wales) Order 2023 (“the Order”) revokes and replaces, subject to some changes and a transitional provision, the Agricultural Wages (No. 2) (Wales) Order 2022.

Part 2 of the Order provides that agricultural workers are to be employed subject to the terms and conditions set out in Parts 2 to 5 of the Order and specifies the different grades and categories of agricultural worker.

Part 3 makes provision about the minimum rates of remuneration that must be paid to agricultural workers. Provision is made for accommodation offset allowance which may be deducted from an agricultural worker’s remuneration. Provision is also made for dog allowance, on-call allowance, night work allowance and birth and adoption grants which do not form part of an agricultural worker’s remuneration.

Part 4 provides that an agricultural worker is entitled to agricultural sick pay in the circumstances specified. Provision is made about calculating the amount of agricultural sick pay that an agricultural worker is entitled to. A payment of statutory sick pay is to count towards an agricultural worker’s entitlement to agricultural sick pay.

Part 5 makes provision about an agricultural worker’s entitlement to time off. Provision is made about an agricultural worker’s entitlement to rest breaks, daily rest and weekly rest period. Provision is also made specifying the agricultural worker’s annual leave year and about the agricultural worker’s entitlement to annual leave, holiday pay and about payment in lieu of annual leave. Provision about an agricultural worker’s entitlement to be paid bereavement leave is made in articles 41 to 43.

Part 6 contains a revocation and a transitional provision.

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



1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 29(3) states:

The minimum rest period provided for in paragraph (8) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

However there is no paragraph (8) in article 29. Other paragraphs make reference to paragraph (3), therefore this erroneous cross reference creates further confusion.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 41(2) of the English language Order introduces the persons in Category A for the purposes of bereavement leave. Sub-paragraph (a) reads “a child”. The Welsh language Order includes “yw plentyn” (a child) in the body of paragraph (2) and as a result there is no sub-paragraph (a). Although this appears to be a formatting issue, the effect is that the English language Order has an article 41(2)(a) and the Welsh language Order does not.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument. These points relate to some of the changes proposed by the Agricultural Advisory Panel for Wales (“the Panel”) to the Agricultural Wages (No. 2) (Wales) Order 2022 that have been included in this Order.

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

Article 2 defines terms used within the Order. We note that at paragraph 23, on page 7 of the Explanatory Memorandum it is stated that:

the term ‘contract of service’ is amended to remove the words ‘of service.’ The rationale behind this amendment is to ensure inclusion of agency workers and workers employed by gang masters who may not be engaged under a contract of service directly with the employer, but under some other form of contract for services.

In accordance with this amendment, we note that the definition of “employment” has been amended, so that workers employed by gangmasters and employment agencies are expressly included.



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

Article 14 sets out provisions to protect the pay of agricultural workers who were employed before 22 April 2022 who may have suffered a reduction in their hourly rate as a result of being assimilated into a lower grade due to changes in the grading structure.

The Panel proposed alternative drafting for the Order, as they were of the view that the pay protection provisions in the Agricultural Wages (No. 2) (Wales) Order 2022 could be interpreted as requiring employers to freeze an agricultural worker's pay at their rate of pay on 22 April 2022 until the minimum hourly rate reaches or exceeds that rate of pay.

The proposed wording in the Explanatory Memorandum, at the bottom of page 8, is different to the wording that appears in the Order. We ask that the Welsh Government clarify the reason for this difference.

5. 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

Article 15 makes provision for accommodation offset allowance which may be deducted from an agricultural worker's remuneration. The employer may deduct no more than £1.65 a week from the agricultural worker's minimum wage where a worker is provided with a house, and the employer may deduct no more than £5.29 per day from the agriculture worker's minimum wage where the worker is provided with other accommodation. We note that the Explanatory Memorandum at paragraph 23, on page 7, states the following:

The Panel has not proposed an increase to these rates since its establishment. Having considered the economic conditions within the sector at this time the Panel have proposed these are increased in line with the percentage increase of the National Living Wage (NLW) bringing the rates for accommodation offset closer to the permitted deduction under the National Minimum Wage legislation.

Welsh Government response

A Welsh Government response is required in respect of points 1, 2 and 4 above.

Legal Advisers

Legislation, Justice and Constitution Committee

22 March 2023



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Legislation, Justice and Constitution Committee