

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – The Senedd

Meeting date: 23 April 2018

Meeting time: 14.00

For further information contact:

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Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest

2 The EU (Withdrawal) Bill: Evidence session – Cabinet Secretary for Finance

2.00

(Pages 1 – 10)

Mark Drakeford AM, Cabinet Secretary for Finance;

Owen Davies, Welsh Government;

Simon Brindle, Welsh Government

CLA(5)–12–18 – Briefing

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

3.1 SL(5)207 – The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

(Pages 11 – 28)

CLA(5)–12–18 – Paper 1 – Regulations

CLA(5)–12–18 – Paper 2 – Explanatory Memorandum

CLA(5)–12–18 – Paper 3 – Report

3.2 SL(5)208 – The Agricultural Wages (Wales) Order 2018

(Pages 29 – 117)



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

CLA(5)–12–18 – Paper 4 – Order

CLA(5)–12–18 – Paper 5 – Explanatory Memorandum

CLA(5)–12–18 – Paper 6 – Letter from the Leader of the House and Chief Whip, Breech of the 21 day rule

CLA(5)–12–18 – Paper 7 – Report

4 Papers to note

4.1 Scrutiny of regulations made under the European Union (Withdrawal) Bill

(Pages 118 – 131)

CLA(5)–12–18 – Paper 8 – Letter to the First Minister: Scrutiny of regulations made under the European Union (Withdrawal) Bill, 17 April 2018

CLA(5)–12–18 – Paper 9 – Letter to the Llywydd: Scrutiny of regulations made under the European Union (Withdrawal) Bill, 17 April 2018

4.2 Letter from the Cabinet Secretary for Economy and Transport: Trade Bill

(Page 132)

CLA(5)–12–18 – Paper 10 – Letter from the Cabinet Secretary for Economy and Transport: Trade Bill, 16 April 2018

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

6 Consideration of evidence: EU (Withdrawal) Bill

7 UK Governance post Brexit – Citizen Panel Draft Report

(Pages 133 – 144)

CLA(5)–12–18 – Paper 11 – Draft Report

8 Resourcing for Brexit

(Pages 145 – 154)

CLA(5)–12–18 – Paper 12 – Letter from the Llywydd, 16 March 2018

CLA(5)–12–18 – Paper 13 – Draft Response

9 Letter to UK Government – Civil Service

(Pages 155 – 156)

CLA(5)–012–18 – Paper 14 – Draft letter

10 Paper to note: correspondence with the Business Committee

(Pages 157 – 159)

CLA(5)–12–18 – Paper 15 – Letter to the Business Committee: Meetings
outside allocated time slot, 12 April 2018

CLA(5)–12–18 – Paper 16 – Letter from the Business Committee: Request to
extend your Monday meeting slot, 19 April 2018

Date of the next meeting

30 April 2018

Document is Restricted

 STATUTORY INSTRUMENTS

2018 No. 437**SEA FISHERIES, ENGLAND AND WALES****SEA FISHERIES, NORTHERN IRELAND****The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018**

Made - - - - 26th March 2018

Laid before Parliament 28th March 2018

Laid before the National Assembly for Wales 28th March 2018

Coming into force - - 30th April 2018

The Secretary of State and, in relation to Wales, the Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to the common agricultural policy of the European Union^(b).

The Secretary of State, in relation to England and Northern Ireland, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018.

(2) These Regulations come into force on 30th April 2018.

(3) These Regulations extend to England and Wales and Northern Ireland.

Interpretation

2. In these Regulations—

“authorised officer” has the meaning given in regulation 4(1);

“compliance notice” has the meaning given in regulation 8(1);

“enforcement authority” means—

(a) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1) and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

(b) The Secretary of State is designated under S.I. 1972/1811. The designation of the Secretary of State in relation to the common agricultural policy under that instrument remains exercisable in relation to Northern Ireland despite the designation of Northern Ireland Ministers and Northern Ireland Departments in relation to that matter under S.I. 2000/2812 (see article 3(2) of that instrument). The Welsh Ministers are designated under S.I. 2010/2690. Designation in relation to the common agricultural policy includes the common fisheries policy: Article 38 of the Treaty on the Functioning of the European Union includes the common fisheries policy within the common agricultural policy.

- (a) in England—
 - (i) the Secretary of State;
 - (ii) the Marine Management Organisation^(a);
 - (iii) for each county, district or London borough, the council of that county, district or borough;
 - (iv) for the City of London (including the Temples), the Common Council; and
 - (v) for the Isles of Scilly, the Council of the Isles of Scilly;
- (b) in Wales—
 - (i) the Welsh Ministers; and
 - (ii) for each county or county borough, the council of that county or county borough; and
- (c) in Northern Ireland—
 - (i) the Department of Agriculture, Environment and Rural Affairs; and
 - (ii) for each district, the council of that district;

“premises” means any land, building, container, vehicle or vessel of any description;

“Regulation 2406/96” means Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products^(b), as last amended by Commission Regulation (EC) No. 790/2005^(c);

“Regulation 1379/2013” means Regulation (EU) No. 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products^(d), as last amended by Regulation (EU) 2015/812 of the European Parliament and of the Council^(e);

“relevant provision” means one of the provisions specified in regulation 3.

Application

3. These Regulations apply for the purposes of enforcing—

- (a) Article 2(1) of Regulation 2406/96 (fishery products may be marketed only if they meet the requirements of the Regulation), read subject to Article 2(2) of that Regulation;
- (b) Article 34(1) of Regulation 1379/2013 (products intended for human consumption may be made available on the market only in accordance with common marketing standards laid down for those products).

Authorised officers

4.—(1) The enforcement authority may in writing appoint an officer (an “authorised officer”) to act for the purposes of these Regulations.

(2) The enforcement authority may provide for an appointment made under paragraph (1) to have effect for limited purposes.

Power to enter premises

5.—(1) Where an authorised officer has reasonable suspicion of a contravention of a relevant provision in, or in connection with, any premises, the officer may, at a reasonable hour, enter those premises for the purpose of enforcing that provision.

(a) The Marine Management Organisation is established under section 1 of the Marine and Coastal Access Act 2009 (c. 23).
 (b) OJ No. L 334, 23.12.1996, p. 1.
 (c) OJ No. L 132, 26.5.2005, p 15.
 (d) OJ No. L 354, 28.12.2013, p. 1.
 (e) OJ No. L 133, 29.5.2015, p.1.

(2) But an authorised officer must not enter any premises under paragraph (1) unless notice of the officer's intention to do so has been served on the occupier a reasonable period in advance.

(3) The requirement to serve notice does not apply—

- (a) where the requirement has been waived;
- (b) where reasonable efforts to agree an appointment have failed;
- (c) where an inspector reasonably believes that serving notice would defeat the object of the entry; or
- (d) in an emergency where entry is required urgently.

(4) Paragraph (1) does not apply in relation to any premises which are used wholly or mainly as a private dwelling house unless a right of entry is conferred by a warrant granted under regulation 6.

(5) An authorised officer must, if requested to do so, produce a duly authenticated document showing the authority of that officer.

(6) An authorised officer who enters any premises which are unoccupied, or from which the occupier is temporarily absent, or who enters any premises by force, must leave them as effectively secured against unauthorised entry as they were before entry.

(7) An authorised officer may—

- (a) be accompanied by such other persons as the authorised officer considers necessary; and
- (b) bring onto the premises such equipment as the authorised officer considers necessary.

(8) A person who is brought by an authorised officer to provide assistance may exercise any powers conferred on the officer by these Regulations, but only under the supervision or direction of the officer.

Warrants

6.—(1) A justice of the peace may, by signed warrant, permit an authorised officer to enter premises if the justice, on sworn information in writing or, in Northern Ireland, on a sworn complaint in writing, is satisfied—

- (a) that there are reasonable grounds to enter those premises for the purpose of enforcing a relevant provision; and
- (b) that any of the conditions in paragraph (2) are met.

(2) The conditions are—

- (a) entry to the premises has been, or is likely to be refused, and notice of the intention to apply for a warrant has been served on the occupier a reasonable period in advance of the application;
- (b) asking for admission to the premises, or serving such notice, would defeat the object of the entry;
- (c) entry is required urgently; or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(3) A warrant may permit an authorised officer to enter by reasonable force if necessary, except in the case of any premises used wholly or mainly as a private dwelling house.

(4) A warrant is valid for three months.

(5) In this regulation, “justice of the peace” in Northern Ireland means a lay magistrate.

Power to inspect and seize etc.

7.—(1) An authorised officer who has entered premises for the purposes of enforcing a relevant provision may for that purpose—

- (a) inspect and search the premises;

- (b) carry out such investigations or tests as may reasonably be necessary;
 - (c) examine any fish, containers for fish and labels found on the premises;
 - (d) seize and detain any fish in respect of which the officer has reasonable grounds to suspect that there has been a contravention of the relevant provision;
 - (e) seize and detain any containers for fish and labels which the officer has reasonable grounds to suspect are relevant to the commission of an offence under these Regulations;
 - (f) take samples from any fish (and send them for laboratory testing);
 - (g) require any person not to remove or cause to be removed any fish from the premises for such period as may be necessary for the purpose of examination of it by the authorised officer;
 - (h) require any person at the premises to produce any documents which are in the possession or custody of that person relating to the catching, landing, grading or marketing of any fish on the premises;
 - (i) inspect and take copies of any documents;
 - (j) have access to, inspect and check the data on any computer and any associated equipment;
 - (k) require a person to render a document or record held on a computer into a visible or legible form;
 - (l) take copies of any data held on any computer or associated equipment; and
 - (m) require any person to provide any such assistance, information, facilities or equipment as is reasonable.
- (2) An authorised officer must—
- (a) as soon as reasonably practicable, provide to the person appearing to be responsible for any item that the authorised officer seizes under paragraph (1) a written receipt for that item; and
 - (b) as soon as is reasonably practicable after deciding that the item is no longer required, return it to that person, apart from—
 - (i) any item to be used as evidence in court proceedings; and
 - (ii) any fish.
- (3) Where an authorised officer has seized items under paragraph (1) for use in evidence in court proceedings and—
- (a) it is subsequently decided—
 - (i) that no court proceedings are to be brought, or
 - (ii) that those items are no longer needed as evidence in court proceedings, or
 - (b) the court proceedings are completed and no order in relation to those items has been made by the court,

an authorised officer must return the items to the person appearing to be responsible for them as soon as is reasonably practicable.

(4) In this regulation, “fish” means any fishery or aquaculture product that an authorised officer reasonably believes is a product listed in Article 3 of Regulation 2406/96 or Annex 1 of Regulation 1379/2013.

Compliance notices

8.—(1) An authorised officer who has reasonable grounds for believing that a person has contravened, or is likely to contravene, a relevant provision may serve a notice (a “compliance notice”) on that person.

- (2) The authorised officer must in the compliance notice—
- (a) state the reason for the service of the notice;

- (b) state the date of service of the notice;
- (c) identify the recipient of the notice;
- (d) specify the steps which the recipient of the notice must take, being such steps as the authorised officer believes are necessary to ensure compliance with the relevant provision;
- (e) state the reason that those steps must be taken;
- (f) specify by when each of the steps must be taken;
- (g) state that failure to comply with the notice is an offence; and
- (h) give details of the right of appeal against the notice, including an explanation of how such an appeal can be made and the period within which such an appeal may be brought.

(3) An authorised officer may serve a notice on a person withdrawing, varying or suspending a compliance notice served under paragraph (1).

(4) A person on whom a compliance notice is served must comply with it at that person's own expense.

(5) If a compliance notice is not complied with, an authorised officer may arrange for it to be complied with at the expense of the person on whom it was served.

(6) An authorised officer must serve a completion notice on a person if, after service of a compliance notice on that person, the authorised officer is satisfied that that person has taken the steps specified in the notice to remedy the contravention.

(7) In the event of an authorised officer not being satisfied as mentioned in paragraph (6) by the end of the period specified in paragraph (2)(f), or such other period as may be specified in any variation of the compliance notice under paragraph (3), the authorised officer may not serve a completion notice, and must serve a notice, which must—

- (a) give reasons for the decision not to serve a completion notice; and
- (b) give details about the right of appeal against the decision.

(8) A compliance notice ceases to have effect when a completion notice is served.

Further provision about notices

9.—(1) A notice required or authorised to be served under these Regulations on any person must be in writing and may be served on a person by—

- (a) personal delivery;
- (b) leaving it at the person's proper address; or
- (c) sending it by post or by electronic means to the person's proper address.

(2) In the case of a body corporate, a notice may be served on an officer of that body.

(3) In the case of a partnership, a notice may be served on a partner or person who has control or management of the partnership business.

(4) In the case of an unincorporated association, a notice may be served on an officer of the association or a member of its governing body.

(5) For the purposes of this regulation and section 7 of the Interpretation Act 1978^(a) (references to service by post) in its application to this regulation, "proper address" means—

- (a) in the case of a body corporate or an officer of that body—
 - (i) the address of the registered or principal office of the body; or
 - (ii) the email address of the officer;
- (b) in the case of a partnership or a partner or person who has control or management of the partnership business—

^(a) 1978 c. 30.

- (i) the address of the registered or principal office of the partnership; or
- (ii) the email address of the partner or person who has control or management of the partnership business;
- (c) in the case of an unincorporated association or an officer of the association or member of its governing body—
 - (i) the address of the principal office of the association; or
 - (ii) the email address of the officer or member;
- (d) in any other case, a person's last known address, which includes an email address.

(6) For the purposes of paragraph (5), the principal office of a body corporate registered outside the United Kingdom or of a partnership or unincorporated association carrying on a business outside the United Kingdom is its principal office in the United Kingdom.

(7) If a person to be served with a notice has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept notices, that address must instead be treated as that person's proper address.

Appeals: England and Wales

- 10.**—(1) This regulation applies in relation to England and Wales only.
- (2) A person on whom a compliance notice has been served may appeal against—
- (a) the decision of an authorised officer to serve that compliance notice; or
 - (b) a decision of an authorised officer not to serve a completion notice in relation to that compliance notice.
- (3) The right of appeal is to the First-tier Tribunal.
- (4) A compliance notice is not suspended pending the determination or withdrawal of an appeal unless the First-tier Tribunal directs otherwise.
- (5) On appeal under this regulation, the First-tier Tribunal may—
- (a) either cancel or confirm the compliance notice, and, if it confirms the notice, it may do so either in its original form or with such modifications as it thinks fit; or
 - (b) make such order as it thinks fit as regards a decision not to serve a completion notice.

Appeals: Northern Ireland

- 11.**—(1) This regulation applies in relation to Northern Ireland only.
- (2) A person on whom a compliance notice has been served may appeal against—
- (a) the decision of an authorised officer to serve that compliance notice; or
 - (b) a decision of an authorised officer not to serve a completion notice in relation to that compliance notice.
- (3) The appeal must be made within 28 days of notification of the decision to be appealed.
- (4) The right of appeal is to a court of summary jurisdiction (within the meaning of the Magistrates' Courts (Northern Ireland) Order 1981^(a)) and the procedure on an appeal is by way of notice under Part 7 of that Order.
- (5) A compliance notice is not suspended pending the determination or withdrawal of an appeal unless the court directs otherwise.
- (6) On appeal under this regulation, the court may—
- (a) either cancel or confirm the compliance notice, and, if it confirms the notice, it may do so either in its original form or with such modifications as it thinks fit; or

(a) S.I. 1981/1675 (N.I. 26).

- (b) make such order as it thinks fit as regards a decision not to serve a completion notice.

Offences: general

12.—(1) A person commits an offence if that person contravenes, or causes or permits a person to contravene, a relevant provision.

(2) A person commits an offence if that person fails to comply with a compliance notice served under regulation 8.

(3) But it is a defence for a person charged with an offence under paragraph (1) or (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Obstruction offences

13. A person commits an offence if that person—

- (a) intentionally obstructs an authorised officer exercising a power under these Regulations;
- (b) fails, without reasonable excuse, to give any assistance or information that the authorised officer may reasonably require for the performance of that officer's functions under these Regulations;
- (c) knowingly or recklessly gives false or misleading information to an authorised officer; or
- (d) fails to produce a label, document or record to an authorised officer when required to do so.

Offences by bodies corporate, partnerships and unincorporated associations

14.—(1) Where a body corporate is guilty of an offence under these Regulations and that offence is proven to have been committed with the consent or connivance of, or to have been attributed to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence.

(2) In paragraph (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where a partnership is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a partner, the partner, as well as the partnership, is guilty of the offence.

(4) In paragraph (3), “partner”, includes a person purporting to act as a partner.

(5) Where an unincorporated association is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, an officer of the association, that officer, as well as the association, is guilty of the offence.

(6) In paragraph (5), “officer”, in relation to an unincorporated association, means—

- (a) an officer of the association or a member of its governing body; or
- (b) a person purporting to act in that capacity.

Penalties

15. A person guilty of an offence under regulation 12 or 13 is liable on summary conviction—

- (a) in England and Wales, to a fine; or
- (b) in Northern Ireland, to a fine not exceeding level 5 on the standard scale.

Protection of authorised officers acting in good faith

16.—(1) An authorised officer or person accompanying that officer by virtue of regulation 5(7)(a) is not to be liable in any civil or criminal proceedings for anything done or omitted to be done in, or in connection with, the exercise or the purported exercise of the powers in these Regulations.

(2) Paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith;
- (b) if there were no reasonable grounds for the act or omission; or
- (c) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998^(a) (acts of public authorities incompatible with Convention rights).

Time limit for bringing prosecution

17.—(1) Proceedings for an offence under these Regulations may be commenced within the period of 16 months beginning with the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.

(2) But no such proceedings may be commenced after the period of two years beginning with the date of the commission of the offence.

(3) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be signed is deemed to be so signed unless the contrary is proved.

Proceedings against partnerships and unincorporated associations

18.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings the following apply as if the partnership or unincorporated association were a body corporate—

- (a) rules of court relating to the service of documents;
- (b) in relation to England and Wales, section 33 of the Criminal Justice Act 1925^(b) and Schedule 3 to the Magistrates' Courts Act 1980^(c); and
- (c) in relation to Northern Ireland, Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981^(d) (corporations) and section 18 of the Criminal Justice Act (Northern Ireland) 1945 (procedure on charge)^(e).

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

^(a) 1998 c. 42.

^(b) 1925 c. 86. Relevant amending enactments are the Magistrates' Courts Act 1952 (c. 55), Schedule 6 and the Courts Act 1971 (c. 23), paragraph 19 of Schedule 8.

^(c) 1980 c. 43. Relevant amending enactments are the Criminal Justice Act 1991 (c. 53), sections 25(2) and 101(2) and Schedule 13 and the Criminal Justice Act 2003 (c. 44), paragraph 51(13) of Schedule 3 and Schedule 37.

^(d) S.I. 1981/1675 (N.I. 26).

^(e) 1945 c. 15.

Enforcement

19.—(1) The relevant provisions are enforced by the enforcement authority in accordance with these Regulations, subject to paragraph (3).

(2) The enforcement authority may institute proceedings under these Regulations.

(3) The Secretary of State may delegate to the Director of Public Prosecutions functions in relation to the prosecution of an offence under these Regulations.

Revocations

20. The following instruments are revoked—

- (a) The Sea Fish (Marketing Standards) Regulations 1986(a);
- (b) The Sea Fish (Marketing Standards) (Amendment) Regulations 1989(b);
- (c) The Sea Fish (Marketing Standards) (Amendment) Regulations 1994(c).

26th March 2018

George Eustice
Minister of State
Department for Environment, Food and Rural Affairs

26th March 2018

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs
One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enable the enforcement, in England, Wales and Northern Ireland, of EU common marketing standards for fishery products contained in—

- Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products (OJ No. L334, 23.12.1996, p. 1); and
- Regulation (EU) No. 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products (OJ No. L 354, 28.12.2013, p. 1).

These Regulations make provision for enforcement authorities in England, Wales and Northern Ireland to appoint authorised officers for the purposes of ensuring that EU common marketing standards for fisheries products are complied with (regulation 4).

Authorised officers are provided with powers of entry, inspection and seizure for the purposes of investigation and inspection of relevant premises and products to identify breaches of the relevant EU requirements (regulations 5 and 7). Authorised officers are also given the power to serve compliance notices for breaches of the relevant EU requirements (regulation 8).

Contravening the EU common marketing standards is an offence (regulation 12(1)). The failure to comply with a compliance notice, within the specified time, is also an offence (regulation 12(2)).

The Regulations make provision for appeals against compliance notices and any refusal to serve a completion notice (regulations 10 and 11).

(a) S.I. 1986/1272, amended by S.I. 1989/687, 1994/452; revoked, in relation to Scotland, by S.S.I. 2004/498.

(b) S.I. 1989/687, revoked, in relation to Scotland, by S.S.I. 2004/498.

(c) S.I. 1994/452, revoked, in relation to Scotland, by S.S.I. 2004/498.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.

Explanatory Memorandum to Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

This Explanatory Memorandum has been prepared by the Environment, Planning and Rural Affairs Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations

LESLEY GRIFFITHS

CABINET SECRETARY FOR ENERGY, PLANNING AND RURAL AFFAIRS.

28 March 2018

1. Description

The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018 (“the Regulations”) enable the enforcement of common marketing standards (i.e. fish sizes and freshness) contained in Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products and Regulation (EU) No. 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Regulations are made on a composite basis to maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions. As this composite instrument is subject to approval by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

The Regulations are made subject to the negative procedure.

There is a choice of procedure in relation to instruments made under section 2(2) of the European Communities Act 1972. There were no factors indicating the use of affirmative procedure for these Regulations, considering in particular the enforcement measures are intended to bring up to date existing enforcement measures included in the Sea Fish (Marketing Standards) Regulations 1986 which were also made subject to the negative procedure.

In accordance with section 67(9) of the Police and Criminal Evidence Act 1984, officers exercising powers under these Regulations must have regard to that Act.

3. Legislative background

The Welsh Ministers make the Regulations in relation to Wales pursuant to powers in section 2(2) European Communities Act 1972. For the purposes of section 2(2), the Welsh Ministers are designated in relation to the Common Agricultural Policy and, therefore, the Common Fisheries Policy, by virtue of article 3(1) of the European Communities (Designation) (No 5) Order 2010.

The European Common Organisation of the Markets (CMO) in Fishery and Aquaculture Products Regulation 1379/2013 is the mechanism with which the EU manages the market and maximises value for EU seafood products.

These Regulations enable the enforcement, in England, Wales and Northern Ireland of EU common marketing standards for fishery products contained in—

- Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products; and

- Regulation (EU) No. 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products.

Provisions for the enforcement of sea fish marketing standards in England, Wales, Northern Ireland and Scotland are currently set out in the Sea Fish (Marketing Standards) Regulations 1986 as amended by the Sea Fish (Marketing Standards) (Amendment) Regulations 1989. This instrument will revoke and replace those instruments.

The other provisions of the CMO regulation which required domestic legislation were implemented in England and Wales through the introduction of the Fish Labelling Regulations 2013 and the Fish Labelling (Amendment) Regulations 2014

4. Purpose & intended effect of the legislation

This instrument is necessary to ensure the proper enforcement of the marketing standards laid out in the CMO regulation.

The CMO regulation is the mechanism by which the EU manages the market and maximises value for EU seafood products. A CMO regulation was first introduced in 1970 aiming to provide market stability, ensure a stable supply of quality products, guarantee a fair income for producers and ensure reasonable prices for consumers.

The revised CMO regulation was adopted in 2013 in response to consumer drive for greater information on sustainability, provenance and quality of fish and aquaculture products. The new provisions relate to marketing standards (fish sizes and freshness) and their enforcement, consumer information (fish labelling requirements), Producer Organisations (to plan members' production and develop joint marketing strategies) and their activities, competition rules (such as information on storage, treatment or processing of fishery products) and market intelligence.

The new labelling provisions were transposed through The Fish Labelling Regulations 2013 and The Fish Labelling (Amendment) Regulations 2014. The provisions concerning Producer Organisations were directly applicable and we consider that the current oversight mechanisms are sufficient to monitor PO performance and compliance. This element therefore does not require national legislation. Enforcement provisions for the marketing standards are now being introduced through this instrument. That completes the national legislation required to implement the CMO regulation.

The enforcement provisions introduced by this instrument will bring up-to-date the enforcement provisions for the marketing standards, which are set out in the Sea Fish (Marketing Standards) Regulations 1986 and which relate to the previous version of the CMO. The 1986 enforcement provisions only allow enforcement officers to prosecute for instances of non-compliance with the marketing standards. The new SI applies enforcement provisions to the revised CMO and brings the powers up to date.

This instrument retains the prosecution element for which we have extended the time limit for bringing prosecutions to allow prosecutors sufficient time to collect and process evidence necessary for regulatory offences.

The enforcement provisions in this instrument are needed in order to ensure that marketed fish do not undermine the minimum fish landing sizes specified in the technical conservation regulation and by implication promote fishing for juveniles.

The instrument also introduces civil enforcement procedures as a more flexible and responsive approach to enforcement, which would help to maximise compliance from the fish and aquaculture sector. Specifically, we are proposing to allow for enforcement of the marketing standards by issuing, in the first instance, compliance notices which will specify the steps which the recipient of the notice must take to ensure compliance with the marketing standards. Breach of compliance notices will be an offence and this instrument also introduces an appeals route against such notices.

5. Consultation

The provisions outlined in the new CMO had been previously consulted on in 2011 as part of a series of EU consultations during the review of the Common Fisheries Policy (CFP).

Following the 2011 consultation, Defra conducted a subsequent public consultation on the final CMO proposals over a period of six weeks from 31 March 2014. The 2014 Defra consultation proposed to update legislation in England and Wales to allow for the fish labelling provisions to be introduced into UK law and to bring up to date the enforcement provisions for the common marketing standards. These changes were required to allow for the minimum marketing sizes to align with the Minimum Landing Sizes (MLS) set up in the revised Common Fisheries Policy (CFP).

Five responses to the 2014 consultation were received. Four of these were broadly supportive of the proposed enforcement provisions as a better alternative to the current enforcement regime of direct prosecution. One respondent was doubtful of the effectiveness of the proposed compliance notices as a deterrent against non-compliance. However, to address persistent and high level offenders enforcement officers will be able to prosecute directly for serious offences of non-compliance and for non-compliance with the notices.

6. Regulatory Impact Assessment (RIA)

An RIA has not been completed for these Regulations. The Regulations are not expected to impose an additional cost on the public or voluntary sectors in Wales. Similarly, the Regulations are not expected to impose an additional cost on fisheries businesses which comply with the law, however, costs may be incurred by businesses which choose to operate outside of the law. Defra will incur the cost

associated with establishing a new tribunal to hear appeals against a compliance notice and non-removal of a compliance notice

Failure to introduce these Regulations risks infraction proceedings against the UK by the EU and the associated costs.

SL(5)207 – The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

Background and Purpose

These Regulations enable the enforcement, in England, Wales and Northern Ireland, of EU common marketing standards for fishery products contained in—

- Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products; and
- Regulation (EU) No. 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products.

These Regulations make provision for enforcement authorities in England, Wales and Northern Ireland to appoint authorised officers for the purposes of ensuring that EU common marketing standards for fisheries products are complied with (regulation 4).

Authorised officers are provided with powers of entry, inspection and seizure for the purposes of investigation and inspection of relevant premises and products to identify breaches of the relevant EU requirements (regulations 5 and 7). Authorised officers are also given the power to serve compliance notices for breaches of the relevant EU requirements (regulation 8).

Contravening the EU common marketing standards is an offence (regulation 12(1)). The failure to comply with a compliance notice, within the specified time, is also an offence (regulation 12(2)).

The Regulations make provision for appeals against compliance notices and any refusal to serve a completion notice (regulations 10 and 11).

Procedure

Negative, composite.

Technical Scrutiny

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

1. Standing Order 21.2(v) – the meaning of the instrument needs further explanation.

Regulation 5 sets out a power to enter premises. Regulation 5(5) says that “An authorised officer must, if requested to do so, produce a duly authenticated document showing the authority of that officer”.

It is not clear to us who can make a request to which regulation 5(5) applies. (There may be many people present at premises when enforcement action is being taken.) It must apply when the occupier of the premises makes a request, but to who else does it apply? Does it apply to any family member of the occupier? Does it apply to a person contracted to carry out cleaning services at the premises? Does it apply to a shareholder of a company that owns the premises? Does it apply to a mere passer-by?



2. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh.

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament.

The Welsh Ministers considered it was not reasonably practicable for these Regulations to be made in English and Welsh.

Merits Scrutiny

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

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Explanatory Memorandum says that enforcement officers exercising enforcement powers under the Regulations must have regard to the Police and Criminal Evidence Act 1984. However, the correct position is that enforcement officers must have regard to the statutory codes of practice made under the 1984 Act.

Despite raising concerns around the use of PACE Codes of Practice on a number of occasions, we note that incorrect references to the use of PACE Codes are still common.

2. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Regulation 6 sets out the process for applying for a warrant to enter premises. Regulation 6(4) says that a warrant to enter premises (which can include a person's home) is valid for three months. We question whether it is proportionate to have warrants that are valid for a blanket period of three months, in particular where, for example, all the required entering of the premises may have been completed within a day or two.

We accept that new circumstances may come to light which could require re-entry, but in that case it may be more proportionate to apply for a new warrant, in particular when the warrant relates to entering a person's home.

Implications arising from exiting the European Union

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the European Union (Withdrawal) Bill (the Bill), therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

With regard to the EU Regulations that are enforced by these Regulations, the EU Regulations are classed as "retained direct EU legislation" under the Bill. As drafted, the Bill does not give the Welsh Ministers (or the National Assembly for Wales) power to modify any retained direct EU legislation. Power to modify all retained direct EU legislation is given to UK Ministers; this includes the power to modify retained direct EU legislation in devolved areas.

However, the UK Government has committed to bring forward amendments to the Bill at Report stage in the House of Lords that are expected to lift these restrictions to some extent.



Government Response

A government response is required to the technical and merits scrutiny points.

Legal Advisers

Constitutional and Legislative Affairs Committee

4 April 2018



National Assembly for Wales

Constitutional and Legislative Affairs Committee

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Agenda Item 3.2

WELSH STATUTORY INSTRUMENTS

2018 No. 433 (W. 76)

AGRICULTURE, WALES

The Agricultural Wages (Wales) Order 2018

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and replaces, subject to some changes and a transitional provision, the Agricultural Wages (Wales) Order 2017.

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 (article 3) and specifies the different grades and categories of agricultural worker (article 5 to 11).

Part 3 makes provision about the minimum rates of remuneration that must be paid to agricultural workers (article 12). Provision is made for accommodation offset allowance which may be deducted from an agricultural worker's remuneration (article 15). 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 (article 16).

Part 4 provides that an agricultural worker is entitled to agricultural sick pay in the circumstances specified (articles 18 to 21). Provision is made about calculating the amount of agricultural sick pay that a worker is entitled to (article 22). A payment of statutory sick pay is to count towards an agricultural worker's entitlement to agricultural sick pay (article 23).

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 (article 28). Provision is also made specifying the agricultural worker's annual leave year and about agricultural worker's entitlement to annual leave, holiday pay and about payment in lieu of annual leave (articles 29 to 36). Provision about an agricultural worker's entitlement to be paid bereavement leave is made in articles 39 to 41.

Part 6 contains a revocation and a transitional provision.

The Regulatory Impact Assessment applicable to this Order is obtainable from the Welsh Government at: Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.gov.uk.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 433 (W. 76)

AGRICULTURE, WALES

**The Agricultural Wages (Wales)
Order 2018**

Made 27 March 2018

Laid before the National Assembly for Wales
29 March 2018

Coming into force 1 April 2018

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43. Revocation and transitional provision

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The Agricultural Advisory Panel for Wales, in accordance with their functions under article 3(2)(b) of the Agricultural Advisory Panel for Wales (Establishment) Order 2016⁽¹⁾ have prepared an agricultural wages order in draft, consulted on the order and submitted it to the Welsh Ministers for approval.

The Welsh Ministers have approved the draft agricultural wages order in accordance with section 4(1)(a) of the Agricultural Sector (Wales) Act 2014⁽²⁾.

The Welsh Ministers, in exercise of the powers conferred upon them by sections 3, 4(1) and 17 of the Agricultural Sector (Wales) Act 2014, make the following Order.

PART 1

Preliminary

Title and commencement

1. The title of this Order is the Agricultural Wages (Wales) Order 2018 and it comes into force on 1 April 2018.

Interpretation

2.—(1) In this Order—

“basic hours” (“*oriau sylfaenol*”) means 39 hours of work per week, excluding overtime, worked in accordance with either an agricultural worker’s contract of service or an apprenticeship;

“birth and adoption grant” (“*grant geni a mabwysiadu*”) means a payment that an agricultural worker is entitled to receive from their employer on the birth of their child or upon the adoption of a child and is payable—

- (a) where the agricultural worker has given their employer a copy of the child’s Birth Certificate or Adoption Order (naming the worker as the child’s parent or adoptive parent) within 3 months of the child’s birth or adoption; and
- (b) in circumstances where both parents or adoptive parents are agricultural workers with the same employer, to each agricultural worker;

(1) S.I. 2016/255 (W. 89).

(2) 2014 anaw 6.

“compulsory school age” (“*oedran ysgol gorfodol*”) has the meaning given in section 8 of the Education Act 1996⁽¹⁾;

“guaranteed overtime” (“*goramser gwarantedig*”) means overtime which an agricultural worker is obliged to work either under their contract of service or their apprenticeship and in respect of which the agricultural worker’s employer guarantees payment, whether or not there is work for the agricultural worker to do;

“hours” (“*oriau*”) includes a fraction of an hour;

“house” (“*ty*”) means a whole dwelling house or self-contained accommodation that by virtue of the agricultural worker’s contract of service the agricultural worker is required to live in for the proper or better performance of their duties and includes any garden within the curtilage of such a dwelling house or self-contained accommodation;

“night work” (“*gwaith nos*”) means work (apart from overtime hours) undertaken by an agricultural worker between 7 p.m. on one evening and 6 a.m. the following morning, but excluding the first two hours of work that an agricultural worker does in that period;

“on-call” (“*ar alwad*”) means a formal arrangement between the agricultural worker and their employer where an agricultural worker who is not at work agrees with their employer to be contactable by an agreed method and able to reach the place where they may be required to work within an agreed time;

“other accommodation” (“*llety arall*”) means any living accommodation other than a house which—

- (a) is fit for human habitation;
- (b) is safe and secure;
- (c) provides a bed for the sole use of each individual agricultural worker; and
- (d) provides clean drinking water, suitable and sufficient sanitary conveniences and washing facilities for agricultural workers in accordance with regulations 20 to 22 of the Workplace (Health, Safety and Welfare) Regulations 1992⁽²⁾ as if the accommodation was a workplace to which regulations 20 to 22 of those Regulations applied;

“overtime” (“*goramser*”) means—

- (a) in relation to an agricultural worker who began their employment prior to 1 October

(1) 1996 c. 56. Section 8 was amended by the Education Act 1997 (c. 44), section 52.

(2) S.I. 1992/3004.

2006, time that is not guaranteed overtime worked by the agricultural worker—

- (i) in addition to an 8 hour working day;
 - (ii) in addition to the agreed hours of work in their contract of service;
 - (iii) on a public holiday,
 - (iv) on a Sunday; or
 - (v) in any period commencing on a Sunday and continuing to the following Monday up until the time that worker would normally start their working day;
- (b) in relation to all other agricultural workers, time that is not guaranteed overtime worked by the agricultural worker—
- (i) in addition to an 8 hour working day;
 - (ii) in addition to the agreed hours of work in their contract of service; or
 - (iii) on a public holiday;

“output work” (“*gwaith allbwn*”) means work which, for the purposes of remuneration, is measured by the number of pieces made or processed or the number of tasks performed by an agricultural worker;

“qualifying days” (“*diwrnodau cymwys*”) means days on which the agricultural worker would normally be required to be available for work apart from any days on which the agricultural worker—

- (a) was taking annual leave;
- (b) was taking bereavement leave; or
- (c) was taking statutory maternity, paternity or adoption leave;

“sickness absence” (“*absenoldeb salwch*”) means the absence of an agricultural worker from work due to incapacity by reason of—

- (a) any illness suffered by the agricultural worker;
- (b) illness or incapacity caused by the agricultural worker’s pregnancy or suffered as a result of childbirth;
- (c) an injury that occurs to the agricultural worker at the agricultural worker’s place of work;
- (d) an injury that occurs to the agricultural worker when travelling to or from their place of work;
- (e) time spent by the agricultural worker recovering from an operation caused by an illness; or
- (f) time spent by the agricultural worker recovering from an operation in consequence of an injury suffered at their place of work or

an injury suffered whilst travelling to or from their place of work,

but does not include any injury suffered by the agricultural worker when not at their place of work nor any injury suffered when the agricultural worker is not travelling to or from their place of work;

“travelling” (“*teithio*”) means a journey by a mode of transport or a journey on foot and includes—

- (a) waiting at a place of departure to begin a journey by a mode of transport;
- (b) waiting at a place of departure for a journey to re-commence either by the same or another mode of transport, except for any time the agricultural worker spends taking a rest break; and
- (c) waiting at the end of a journey for the purpose of carrying out duties, or to receive training, except for any time the agricultural worker spends taking a rest break;

“working time” (“*amser gweithio*”) means any period during which an agricultural worker is working at their employer’s disposal and carrying out activities or duties in accordance with either their contract of service or their apprenticeship and includes—

- (a) any period during which an agricultural worker is receiving relevant training;
- (b) any time spent travelling by an agricultural worker for the purposes of their employment but does not include time spent commuting between their home and their place of work;
- (c) any period during which an agricultural worker is prevented from carrying out activities or duties in accordance with their contract of service or their apprenticeship due to bad weather; and
- (d) any additional period which the employer and the agricultural worker agree is to be treated as working time,

and references to “work” (“*gwaith*”) are to be construed accordingly.

(2) In this article the reference to agricultural workers who began their employment prior to the 1 October 2006 includes agricultural workers—

- (a) whose contract terms have since been subject to any variation; or
- (b) who have since been employed by a new employer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽¹⁾.

(1) S.I. 2006/246.

(3) References in this Order to a period of continuous employment are to be construed as a period of continuous employment computed in accordance with sections 210 to 219 of the Employment Rights Act 1996(1).

PART 2

Agricultural workers

Terms and conditions of employment

3. An agricultural worker's employment is subject to the terms and conditions set out in this Part and Parts 3, 4 and 5 of this Order.

Grades and categories of agricultural worker

4. An agricultural worker must be employed as a worker at one of the Grades specified in articles 5 to 9 or 10(1) or as an apprentice in accordance with the provisions in article 11.

Grade 2

5. An agricultural worker who—

- (a) provides documentary evidence to an employer that they hold—
 - (i) one of the awards or certificates of competence listed in the tables in Schedule 1;
 - (ii) one National Vocational Qualification relevant to their work; or
 - (iii) an equivalent qualification; or
- (b) is required to—
 - (i) work without supervision;
 - (ii) work with animals;
 - (iii) work with powered machinery; or
 - (iv) drive an agricultural tractor,

must be employed as a worker at Grade 2.

Grade 3

6.—(1) An agricultural worker who has been employed in agriculture for an aggregate period of at least 2 years in the previous 5 years and who—

(1) 1996 c. 18. Section 211 was amended by Schedule 8 to S.I. 2006/1031. Section 212 was amended by Schedules 4 and 9 to the Employment Relations Act 1999 (c. 26). Section 215 was amended by Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Section 219 was amended by Schedule 15 to the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

- (a) provides documentary evidence to an employer that they hold—
 - (i) one of the awards or certificates of competence listed in the tables in Schedule 2;
 - (ii) one National Vocational Qualification relevant to their work; or
 - (iii) an equivalent qualification; or
- (b) is designated as a team leader,

must be employed as a worker at Grade 3.

(2) For the purposes of this article, a “team leader” is responsible for leading a team of agricultural workers and for monitoring the team’s compliance with instructions given by or on behalf of their employer but is not responsible for disciplinary matters.

Grade 4

7. An agricultural worker who—

- (a) provides documentary evidence to an employer that they hold a total of 8 qualifications which are either—
 - (i) awards or certificates of competence listed in the tables in Schedule 1;
 - (ii) National Vocational Qualifications relevant to their work; or
 - (iii) equivalent qualifications; or
- (b) provides documentary evidence to an employer that they hold 1 of the awards or certificates of competence listed in the tables in Schedule 3 or an equivalent qualification; and
- (c) who has either—
 - (i) been employed in agriculture for an aggregate period of at least 2 years in the last 5 years; or
 - (ii) been continuously employed for a period of at least 12 months or more by the same employer since obtaining the qualifications referred to in paragraphs (a) and (b),

must be employed as a worker at Grade 4.

Grade 5

8. An agricultural worker who is required to have day to day responsibility—

- (a) for supervising the work carried out on the employer’s holding;
- (b) for implementing management decisions; or
- (c) for managing staff,

must be employed as a worker at Grade 5.

Grade 6

9. An agricultural worker who is required to have management responsibility—

- (a) for the entire of the employer's holding;
- (b) for part of the employer's holding which is run as a separate operation or business; or
- (c) for hiring and managing staff,

must be employed as a worker at Grade 6.

Continued Professional Development

10.—(1) An agricultural worker who cannot be employed at one of the Grades 2 to 6 in accordance with the provision in articles 5 to 9 of this Order and who is not an apprentice in accordance with article 11 must be employed as a worker at Grade 1.

(2) An apprentice in the third year and any subsequent year of their apprenticeship is to be subject to the minimum rates of pay and other terms and conditions in this Order that apply to agricultural workers employed at Grade 2.

(3) An agricultural worker must—

- (a) maintain documentary evidence of qualifications and experience gained by them that is relevant to their employment; and
- (b) inform their employer if they have gained qualifications and experience that enables them to be employed at a different Grade.

Apprentices

11.—(1) An agricultural worker is an apprentice employed under an apprenticeship if—

- (a) they are employed under either a contract of apprenticeship, an apprenticeship agreement within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009⁽¹⁾ or are treated as employed under a contract of apprenticeship; and
- (b) they are within the first 12 months after the commencement of that employment under 19 years of age.

(2) An agricultural worker must be treated as employed under a contract of apprenticeship if they are engaged in Wales under Government arrangements known as Foundation Apprenticeships, Apprenticeships or Higher Apprenticeships.

⁽¹⁾ 2009 c. 22.

(3) In this article “Government arrangements” means arrangements made under section 2 of the Employment and Training Act 1973⁽¹⁾ or under section 17B of the Jobseekers Act 1995⁽²⁾.

PART 3

Agricultural minimum wage

Minimum rates of pay

12.—(1) Subject to the operation of section 1 of the National Minimum Wage Act 1998⁽³⁾, agricultural workers must be remunerated by their employer in respect of their work at a rate which is not less than the agricultural minimum wage.

(2) The agricultural minimum wage is the minimum hourly rate specified in the Table in Schedule 4 as being applicable to each grade of agricultural worker and to apprentices.

Minimum rates of pay for overtime

13. Agricultural workers must be remunerated by their employer in respect of overtime worked at a rate which is not less than 1.5 times the agricultural minimum wage specified in article 12 of, and Schedule 4 to, this Order which is applicable to their grade or category.

Minimum rates of pay for output work

14. Agricultural workers must be remunerated by their employer in respect of output work at a rate which is not less than the agricultural minimum wage specified in article 12 of, and Schedule 4 to, this Order which is applicable to their grade or category.

-
- (1) 1973 c. 50. Section 2 was amended by section 25 of the Employment Act 1988 (c. 19) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19). Relevant functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 1995 c. 18. Section 17B is repealed by section 147 of, and Part 4 of Schedule 14 to the Welfare Reform Act 2012 (c. 5). The repeal has effect for certain purposes pursuant to S.I. 2013/983, S.I. 2013/1511, S.I. 2013/2657, S.I. 2013/2846, S.I. 2014/209, S.I. 2014/1583, S.I. 2014/2321, S.I. 2014/3094, S.I. 2015/33, S.I. 2015/101, S.I. 2015/634, S.I. 2015/1537, S.I. 2015/1930, S.I. 2016/33 and S.I. 2016/407.
- (3) 1998 c. 39.

Accommodation offset allowance

15.—(1) Where in any week an employer provides an agricultural worker with a house for the whole of that week, the employer may deduct the sum of £1.50 from the agricultural worker's minimum wage payable under article 12 of this Order for that week.

(2) Subject to paragraphs (3) and (4), where in any week an employer provides an agricultural worker with other accommodation, the employer may deduct the sum of £4.82 from the agricultural worker's minimum wage payable under article 12 of this Order for each day in the week that the other accommodation is provided to the worker.

(3) The deduction in paragraph (2) may only be made when the agricultural worker has worked for a minimum of 15 hours in that week.

(4) Any time during that week when the agricultural worker is on annual leave or bereavement leave must count towards those 15 hours.

Payments which do not form part of an agricultural worker's remuneration

16. The following allowances and payments do not form part of an agricultural worker's remuneration—

- (a) a dog allowance of £8.02 per dog to be paid weekly where an agricultural worker is required by their employer to keep one or more dogs;
- (b) on-call allowance of a sum which is equivalent to two times the hourly overtime rate set out in article 13 of this Order;
- (c) a night work allowance of £1.52 for each hour of night work; and
- (d) a birth and adoption grant of £63.09 for each child.

Training costs

17.—(1) Where an agricultural worker attends a training course with the prior agreement of their employer, the employer must pay—

- (a) any fees for the course; and
- (b) any travelling and accommodation expenses incurred by the agricultural worker attending the course.

(2) An agricultural worker who has been continuously employed at Grade 1 by the same employer for not less than 30 weeks is deemed to have received the approval of their employer to undertake training with a view to attaining the necessary qualifications required of a Grade 2 worker.

(3) Any training undertaken by an agricultural worker in accordance with paragraph (2), is to be paid for by the employer.

PART 4

Entitlement to agricultural sick pay

Entitlement to agricultural sick pay

18. Subject to the provisions in this Part, an agricultural worker is entitled to receive agricultural sick pay from their employer in respect of their sickness absence.

Qualifying conditions for agricultural sick pay

19. An agricultural worker qualifies for agricultural sick pay under this Order provided that the agricultural worker has—

- (a) been continuously employed by their employer for a period of at least 52 weeks prior to the sickness absence;
- (b) notified their employer of the sickness absence in a way previously agreed with their employer or, in the absence of any such agreement, by any reasonable means;
- (c) in circumstances where the sickness absence has continued for a period of 8 or more consecutive days, provided their employer with a certificate from a registered medical practitioner which discloses the diagnosis of the worker's medical disorder and states that the disorder has caused the agricultural worker's sickness absence.

Periods of sickness absence

20. Any 2 periods of sickness absence which are separated by a period of not more than 14 days must be treated as a single period of sickness absence.

Limitations on entitlement to agricultural sick pay

21.—(1) Agricultural sick pay will not be payable for the first 3 days sickness absence in circumstances where the duration of the sickness absence is less than 14 days.

(2) During each period of entitlement, the maximum number of weeks that an agricultural worker is entitled to agricultural sick pay is—

- (a) 13 weeks where the agricultural worker has been employed by the same employer for at least 12 months but not more than 24 months;

- (b) 16 weeks where the agricultural worker has been employed by the same employer for at least 24 months but not more than 36 months;
- (c) 19 weeks where the agricultural worker has been employed by the same employer for at least 36 months but not more than 48 months;
- (d) 22 weeks where the agricultural worker has been employed by the same employer for at least 48 months but not more than 59 months;
- (e) 26 weeks where the agricultural worker has been employed by the same employer for 59 months or more.

(3) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a fixed number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to the agricultural worker by the number of qualifying days worked each week.

(4) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a varying number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to that worker by the number of relevant days.

(5) The number of relevant days is calculated by dividing the number of qualifying days worked during a period of 12 months leading up to the period of sickness absence by 52.

(6) An agricultural worker's maximum entitlement to agricultural sick pay applies regardless of the number of occasions of sickness absence during any period of entitlement.

(7) Subject to paragraph (8), in this article, "a period of entitlement" is a period beginning with the commencement of a sickness absence and ending 12 months later.

(8) If the agricultural worker has a period of sickness absence which commences at any time during the period of entitlement described in paragraph (7), but which continues beyond the end of that period of entitlement, the period of entitlement must be extended so as to end on whichever of the following first occurs—

- (a) the date when the agricultural worker's sickness absence ends and the agricultural worker returns to work; or
- (b) the day on which the agricultural worker reaches the maximum entitlement to agricultural sick pay applicable to the 12 month period referred to in paragraph (7) (had it not been extended).

Determining the amount of agricultural sick pay

22.—(1) Agricultural sick pay is payable at a rate which is equivalent to the minimum hourly rate of pay prescribed in article 12 of, and Schedule 4 to, this Order as applicable to that grade or category of agricultural worker.

(2) The amount of agricultural sick pay payable to an agricultural worker is determined by calculating the number of daily contractual hours that would have been worked during a period of sickness absence.

(3) The number of daily contractual hours are determined—

- (a) in circumstances where an agricultural worker works a fixed number of hours each week by dividing the total number of hours worked during any week by the number of days worked in that week;
- (b) in circumstances where an agricultural worker works a varying number of hours each week, by applying the formula—

$$\frac{QH}{8}$$

DWEW

where for the purposes of this article:

QH is the total number of qualifying hours in the period, and

DWEW is the number of days worked each week by the agricultural worker when taken as an average during a period of 8 weeks immediately preceding the commencement of the sickness absence.

(4) In this article “qualifying hours” are hours where—

- (a) the agricultural worker worked basic hours or guaranteed overtime;
- (b) the agricultural worker took annual leave or bereavement leave;
- (c) the agricultural worker had sickness absence qualifying for agricultural sick pay under this Order; or
- (d) the agricultural worker had sickness absence not qualifying for agricultural sick pay under this Order; and

“qualifying days” are any days within the period on which there were qualifying hours relating to the agricultural worker.

(5) For the purposes of calculations under this article, where an agricultural worker has been employed by their employer for less than 8 weeks, account must be taken of qualifying hours and qualifying days in the actual number of weeks of the agricultural worker’s employment with their employer.

Agricultural sick pay to take account of statutory sick pay

23. An amount equal to any payment of statutory sick pay made in accordance with Part XI of the Social Security Contributions and Benefits Act 1992⁽¹⁾ in respect of a period of an agricultural worker's sickness absence may be deducted from that worker's agricultural sick pay.

Payment of agricultural sick pay

24. Agricultural sick pay must be paid to the agricultural worker on their normal pay day in accordance with either their contract of service or their apprenticeship.

Employment ending during sickness absence

25.—(1) Subject to paragraph (2), if during a period of sickness absence, either an agricultural worker's contract of service or their apprenticeship is terminated or the agricultural worker is given notice that either their contract of service or their apprenticeship is to be terminated, any entitlement which the agricultural worker has to agricultural sick pay continues after that contract ends as if the agricultural worker was still employed by their employer, until one of the following occurs—

- (a) the agricultural worker's sickness absence ends;
- (b) the agricultural worker starts work for another employer; or
- (c) the maximum entitlement to agricultural sick pay in accordance with article 21 is exhausted.

(2) An agricultural worker whose contract has been terminated is not entitled to any agricultural sick pay after the end of their employment in accordance with paragraph (1) if the agricultural worker was given notice that their employer intended to terminate their contract of service or their apprenticeship before the period of sickness absence commenced.

Overpayments of agricultural sick pay

26.—(1) Subject to the provisions of paragraph (2), if an agricultural worker who is entitled to agricultural sick pay under this Part is paid more agricultural sick pay than their entitlement, their employer can recover the overpayment of such agricultural sick pay by deduction from that agricultural worker's wages.

(1) 1992 c. 4.

(2) If an overpayment of agricultural sick pay under this Order is deducted as mentioned in paragraph (1), the employer must not deduct more than 20% of the agricultural worker's gross wage unless notice has been given to terminate the employment or the employment has already been terminated in which case more than 20% of the agricultural worker's gross wage may be deducted by the employer from payment of the agricultural worker's final wages.

Damages recovered for loss of earnings

27.—(1) This article applies to an agricultural worker whose entitlement to agricultural sick pay arises because of the actions or omissions of a person other than their employer and damages are recovered by the agricultural worker in respect of loss of earnings suffered during the period in respect of which the agricultural worker received agricultural sick pay from their employer.

(2) Where paragraph (1) applies—

- (a) the agricultural worker must immediately notify their employer of all the relevant circumstances and of any claim and of any damages recovered under any compromise, settlement or judgment;
- (b) all agricultural sick pay paid by the employer to that agricultural worker in respect of the sickness absence for which damages for loss of earnings are recovered must constitute a loan to the worker; and
- (c) the agricultural worker must refund to their employer a sum not exceeding the lesser of—
 - (i) the amount of damages recovered for loss of earnings in the period for which agricultural sick pay was paid; and
 - (ii) the sums advanced to the agricultural worker from their employer under this Part by way of agricultural sick pay.

PART 5

Entitlement to time off

Rest breaks

28.—(1) An agricultural worker who is aged 18 or over and who has a daily working time of more than 5 and a half hours is entitled to a rest break.

(2) The rest break provided for in paragraph (1) is an uninterrupted period of not less than 30 minutes and the agricultural worker is entitled to spend it away from their workstation (if they have one) or other place of work.

(3) Subject to paragraph (4), the provisions relating to rest breaks as specified in paragraphs (1) and (2) do not apply to an agricultural worker where—

- (a) due to the specific characteristics of the activity in which the agricultural worker is engaged, the duration of their working time is not measured or predetermined;
- (b) the agricultural worker's activities involve the need for continuity of service or production;
- (c) there is a foreseeable surge of activity;
- (d) the agricultural worker's activities are affected by—
 - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of their employer;
 - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or
 - (iii) an accident or the imminent risk of an accident; or
- (e) the employer and agricultural worker agree to modify or exclude the application of paragraphs (1) and (2) in the manner and to the extent permitted by or under the Working Time Regulations 1998⁽¹⁾.

(4) Where paragraph (3) applies and an agricultural worker is accordingly required by their employer to work during a period which would otherwise be a rest break—

- (a) the employer must, unless sub-paragraph (b) applies, allow the agricultural worker to take an equivalent period of compensatory rest; and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the agricultural worker's employer must afford them such protection as may be appropriate in order to safeguard the agricultural worker's health and safety.

Annual leave year

29. The annual leave year for all agricultural workers is the period of 12 months beginning on 1 October and ending on 30 September.

⁽¹⁾ S.I. 1998/1833.

Amount of annual leave for agricultural workers with fixed working days employed throughout the annual leave year

30.—(1) An agricultural worker who is employed by the same employer throughout the annual leave year is entitled to the amount of annual leave prescribed in the Table in Schedule 5.

(2) Where an agricultural worker works their basic hours and, where applicable any guaranteed overtime, on a fixed number of qualifying days each week, the number of days worked each week for the purposes of the Table in Schedule 5 is that fixed number of days.

Amount of annual leave for agricultural workers with variable working days employed throughout the annual leave year

31.—(1) Where an agricultural worker works their basic hours on a varying number of days each week, the number of days worked each week for the purposes of the Table in Schedule 5, is to be taken as an average of the number of qualifying days worked each week during the period of 12 weeks immediately preceding the commencement of the agricultural worker's annual leave and that average number of qualifying days must, where appropriate, be rounded to the nearest whole day.

(2) At the end of the annual leave year the employer must calculate the agricultural worker's actual entitlement for the purposes of the Table in Schedule 5, based upon the number of qualifying days worked each week, taken as an average of the number of qualifying days worked each week during the annual leave year (i.e. over a period of 52 weeks) and the average number of qualifying days must be, where appropriate, rounded to the nearest whole day.

(3) If at the end of the annual leave year, the agricultural worker has accrued but untaken holiday entitlement, the agricultural worker is entitled to carry forward any accrued but untaken holiday to the following annual leave year in accordance with article 33(3) of this Order or the agricultural worker and the employer may agree to a payment in lieu of any accrued but untaken holiday in accordance with article 36 of this Order.

(4) If at the end of the annual leave year, the agricultural worker has taken more holiday days than they were entitled to under this Order, based on the average number of qualifying days worked per week (calculated in accordance with paragraph (2)), the employer is entitled to deduct any pay for holiday days taken in excess of the agricultural worker's entitlement or, in the alternative, deduct the holiday days taken in excess of the agricultural worker's entitlement from their entitlement for the following annual leave year

(provided any such deduction does not result in the agricultural worker receiving less than their statutory annual leave entitlement under regulations 13 and 13A of the Working Time Regulations 1998).

Amount of annual leave for agricultural workers employed for part of the leave year

32.—(1) An agricultural worker employed by the same employer for part of the annual leave year is entitled to accrue annual leave at a rate of $\frac{1}{52}$ nd of the annual leave entitlement specified in the Table in Schedule 5 for each completed week of service with the same employer.

(2) Where the amount of annual leave accrued in a particular case includes a fraction of a day other than a half day, that fraction is to be—

- (a) rounded down to the next whole day if it is less than half a day; and
- (b) rounded up to the next whole day if it is more than half a day.

Timing of annual leave

33.—(1) An agricultural worker may take annual leave to which they are entitled under this Order at any time within the annual leave year subject to the approval of their employer.

(2) An agricultural worker is not entitled to carry forward from one leave year to the next leave year any untaken annual leave entitlement without the approval of their employer.

(3) Where an employer has agreed that an agricultural worker may carry forward any unused annual leave entitlement, the balance carried forward may only be taken in the leave year to which it is carried forward.

(4) During the period from 1 October to 31 March in any annual leave year an employer may require an agricultural worker to take up to 2 weeks of their annual leave entitlement under this Order and may direct that the worker takes one of those 2 weeks of annual leave on days in the same week.

(5) During the period from 1 April to 30 September in any annual leave year an employer must permit an agricultural worker to take 2 weeks of the worker's annual leave entitlement under this Order in consecutive weeks.

(6) For the purpose of this article, 1 week of an agricultural worker's annual leave is equivalent to the number of days worked each week by the agricultural worker as determined in accordance with articles 30 and 31.

Holiday pay

34.—(1) An agricultural worker is entitled to be remunerated in respect of each day of annual leave taken by them.

(2) The amount of holiday pay to which an agricultural worker is entitled under paragraph (1) is to be determined by dividing the agricultural worker's weekly wage as determined in accordance with paragraph (3), or as the case may be paragraph (4), by the number of qualifying days worked each week by that agricultural worker.

(3) Where the agricultural worker's normal working hours under either their contract of service or apprenticeship do not vary (subject to paragraph (4)), the amount of the agricultural worker's weekly pay for the purposes of paragraph (2) is the agricultural worker's normal weekly pay payable by the employer.

(4) Where the agricultural worker's normal working hours vary from week to week, or where an agricultural worker with normal working hours (as in paragraph (3)) works overtime in addition to those hours, the amount of the agricultural worker's normal weekly pay for the purposes of paragraph (2) is calculated by adding together the amount of the agricultural worker's normal weekly pay in each of the 12 weeks immediately preceding the commencement of the worker's annual leave and dividing the total by 12.

(5) For the purposes of this article "normal weekly pay" means—

- (a) the agricultural worker's basic pay under their contract of service or apprenticeship; and
- (b) any overtime pay and any allowance paid to the agricultural worker on a consistent basis.

(6) Where an agricultural worker has been employed by their employer for less than 12 weeks, account must be taken only of weeks in which pay was due to the agricultural worker.

(7) For the purposes of paragraph (2), the number of qualifying days worked is determined in accordance with the provisions in articles 30 and 31 of this Order.

(8) Any pay due to an agricultural worker under this article must be made not later than the agricultural worker's last working day before the commencement of the period of annual leave to which the payment relates.

Public holidays and bank holidays

35.—(1) This article applies where a public holiday or bank holiday in Wales falls on a day when an agricultural worker is normally required to work either under their contract of service or their apprenticeship.

(2) An agricultural worker required by their employer to work on the public holiday or bank holiday is entitled to be paid not less than the overtime rate specified in article 13.

(3) An agricultural worker who is not required by their employer to work on the public holiday or bank holiday is to have the balance of their accrued annual leave for that leave year under this Order reduced by 1 day in respect of the public holiday or bank holiday on which the agricultural worker is not required to work.

Payment in lieu of annual leave

36.—(1) Subject to the conditions in paragraph (2), an agricultural worker and their employer may agree that the agricultural worker is to receive payment in lieu of a day of the agricultural worker's annual leave entitlement.

- (2) The conditions referred to in paragraph (1) are—
- (a) the maximum number of days for which an agricultural worker can receive a payment in lieu of annual leave during any annual leave year is prescribed in the Table in Schedule 6;
 - (b) a written record is to be kept by the employer of any agreement that an agricultural worker will receive payment in lieu of a day's annual leave for a minimum of 3 years commencing at the end of that annual leave year;
 - (c) in circumstances where the agricultural worker does not work on a day as agreed in accordance with paragraph (1), that day is to remain part of the agricultural worker's annual leave entitlement;
 - (d) payment in lieu of annual leave is to be paid at a rate which comprises both the overtime rate specified in article 13 and holiday pay calculated in accordance with article 34 as if the day for which a payment in lieu of annual leave is made is a day on which the agricultural worker is taking annual leave.

Payment of holiday pay on termination of employment

37.—(1) Where an agricultural worker's employment is terminated and the agricultural worker has not taken all of the annual leave entitlement which has accrued to them at the date of termination, the agricultural worker is entitled in accordance with paragraph (2) to be paid in lieu of that accrued but untaken annual leave.

(2) The amount of payment to be made to the agricultural worker in lieu of each day of their accrued but untaken holiday as at the date of termination is to be calculated in accordance with article 34 as if the

date of termination was the first day of a period of the agricultural worker's annual leave.

Recovery of holiday pay

38.—(1) If an agricultural worker's employment terminates before the end of the annual leave year and the agricultural worker has taken more annual leave than they were entitled to under the provisions of this Order or otherwise, their employer is entitled to recover the amount of holiday pay which has been paid to the agricultural worker in respect of annual leave taken in excess of their entitlement.

(2) Where under paragraph (1) an employer is entitled to recover holiday pay from an agricultural worker, the employer may do so by means of a deduction from the final payment of wages to the agricultural worker.

Bereavement leave

39.—(1) An agricultural worker is entitled to paid bereavement leave in circumstances where the bereavement relates to a person in Category A or Category B.

(2) For the purposes of paragraph (1), persons in Category A are—

- (a) a parent of the agricultural worker;
- (b) a son or daughter of the agricultural worker;
- (c) the agricultural worker's spouse or civil partner; or
- (d) someone with whom the agricultural worker lives as husband and wife without being legally married or someone with whom the agricultural worker lives as if they were in a civil partnership.

(3) For the purposes of paragraph (1), persons in Category B are—

- (a) a brother or sister of the agricultural worker;
- (b) a grandparent of the agricultural worker; or
- (c) a grandchild of the agricultural worker.

(4) Bereavement leave for the purposes of paragraph (1) is in addition to any other leave entitlements under this Order.

Determining the amount of bereavement leave

40.—(1) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person within Category A is—

- (a) 4 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer; or

- (b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (2).

(2) Subject to paragraph (6), the amount of an agricultural worker's entitlement to bereavement leave following the death of a person within Category A is to be calculated according to the following formula—

$$\frac{\text{DWEW} \times 4}{5}$$

(3) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person in Category B is—

- (a) 2 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer; or
- (b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (4).

(4) Subject to paragraph (6), where this article applies the amount of an agricultural worker's entitlement to bereavement leave following the death of a person within Category B is to be calculated according to the following formula—

$$\frac{\text{DWEW} \times 2}{5}$$

(5) For the purposes of the formula in paragraphs (2) and (4), DWEW is the number of days worked each week by the agricultural worker calculated in accordance with article 30 or 31 (as appropriate).

(6) Where the calculation in either paragraph (2) or (4) results in an entitlement to bereavement leave of less than 1 day, the entitlement is to be rounded up to one whole day.

(7) In circumstances where an agricultural worker has more than one employment (whether with the same employer or with different employers), paid bereavement leave may be taken in respect of more than one employment but must not exceed, in respect of any one occasion of bereavement, the maximum amount of bereavement leave specified for a single employment in this article.

Amount of pay for bereavement leave

41. The amount of pay in respect of bereavement leave is to be determined in accordance with the provisions in article 34 as if the first day of the

agricultural worker's bereavement leave was the first day of that worker's annual leave.

Unpaid leave

42. An agricultural worker may, with their employer's consent, take a period of unpaid leave.

PART 6

Revocation and transitional provision

Revocation and transitional provision

43.—(1) The Agricultural Wages (Wales) Order 2017⁽¹⁾ ("the 2017 Order") is revoked.

(2) An agricultural worker employed as a worker at a Grade or as an apprentice, and subject to the terms and conditions prescribed in the 2017 Order or any previous Orders continue to be employed in that Grade or as an apprentice and are, from the date this Order comes into force, subject to the terms and conditions prescribed in this Order.

(3) In this article "previous Orders" means the 2016 Order, the Agricultural Wages (England and Wales) Order 2012 and every order revoked by article 70 of that Order.

Lesley Griffiths

Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers

27 March 2018

(1) S.I. 2017/1058 (W. 271).

SCHEDULE 1 Articles 5 and 7

AWARDS AND CERTIFICATES OF COMPETENCE FOR GRADE 2 WORKERS

Table 1

Award Code	Awarding Organisation	Level	Title
600/7421/8	ABC	Level 1	Level 1 Award In Practical Countryside Skills
600/7388/3	ABC	Level 1	Level 1 Award In Practical Horticulture Skills
600/7423/1	ABC	Level 1	Level 1 Certificate In Practical Countryside Skills
600/7389/5	ABC	Level 1	Level 1 Certificate In Practical Horticulture Skills
600/7424/3	ABC	Level 1	Level 1 Diploma In Practical Countryside Skills
500/9700/3	ABC	Level 1	Level 1 Award in Practical Countryside Skills
500/9854/8	ABC	Level 1	Level 1 Award in Practical Horticulture Skills
600/5890/0	NOCN	Level 1	Level 1 Award in Horticulture
600/5891/2	NOCN	Level 1	Level 1 Certificate in Horticulture
601/0156/8	NOCN	Level 1	Level 1 Award in Vocational Studies (Horticulture)
601/0157/X	NOCN	Level 1	Level 1 Certificate in Vocational Studies (Horticulture)
500/6256/6	City & Guilds	Level 1	Level 1 Award in Land-based Studies
500/6713/8	City & Guilds	Level 1	Level 1 Award in Work-Based Agriculture
500/6708/4	City & Guilds	Level 1	Level 1 Award in Work-Based Horticulture
500/6712/6	City & Guilds	Level 1	Level 1 Award in Work-Based Land-based Operations
500/6257/8	City & Guilds	Level 1	Level 1 Certificate in Land-based Studies
500/6752/7	City & Guilds	Level 1	Level 1 Certificate in Work-Based Agriculture
500/6659/6	City & Guilds	Level 1	Level 1 Certificate in Work-Based Horticulture
500/6660/2	City & Guilds	Level 1	Level 1 Certificate in Work-based Land-Based Operations
500/6268/2	City & Guilds	Level 1	Level 1 Diploma in Land-based Studies
500/6761/8	City & Guilds	Level 1	Level 1 Diploma in Work-Based Agriculture
500/6709/6	City & Guilds	Level 1	Level 1 Diploma in Work-Based Horticulture

500/6711/4	City & Guilds	Level 1	Level 1 Diploma in Work-based Land-based Operations
600/5587/X	City & Guilds	Level 1	Level 1 Award in Practical Horticulture Skills
600/5611/3	City & Guilds	Level 1	Level 1 Certificate in Practical Horticulture Skills
600/5612/5	City & Guilds	Level 1	Level 1 Diploma in Practical Horticulture Skills
500/9128/1	RHS	Level 1	Level 1 Award in Practical Horticulture
601/0613/X	RHS	Level 1	Level 1 Introductory Award in Practical Horticulture
601/0554/9	RHS	Level 2	Level 2 Certificate in the Principles of Plant Growth, Propagation and Development
601/0355/3	RHS	Level 2	Level 2 Certificate in the Principles of Horticulture
500/9635/7	ABC	Level 2	Level 2 Award in Practical Horticulture Skills
501/1411/6	ABC	Level 2	Level 2 Certificate in Arboriculture
500/9633/3	ABC	Level 2	Level 2 Certificate in Practical Horticulture Skills
603/0159/4	NOCN	Level 2	Level 2 Award for the Safe Worker
500/7689/9	City & Guilds	Level 2	Level 2 Award in Safe Working in Agriculture and Production Horticulture
500/6938/X	City & Guilds	Level 2	Level 2 Award in Work-based Agriculture
500/6871/9	City & Guilds	Level 2	Level 2 Award in Work-based Horticulture
500/8584/0	City & Guilds	Level 2	Level 2 Certificate in Agriculture
500/8552/9	City & Guilds	Level 2	Level 2 Certificate in Forestry and Arboriculture
500/8577/3	City & Guilds	Level 2	Level 2 Certificate in Horticulture
500/0677/6	City & Guilds	Level 2	Level 2 Certificate in Land-based Technology
500/6939/1	City & Guilds	Level 2	Level 2 Certificate in Work-based Agriculture
500/6816/7	City & Guilds	Level 2	Level 2 Certificate in Work-based Horticulture
500/8590/6	City & Guilds	Level 2	Level 2 Extended Certificate in Agriculture
500/8587/6	City & Guilds	Level 2	Level 2 Extended Certificate in Forestry and Arboriculture
500/8582/7	City & Guilds	Level 2	Level 2 Extended Certificate in Horticulture
501/0683/1	City & Guilds	Level 2	Level 2 Extended Certificate in Land-based Technology
600/4671/5	City & Guilds	Level 2	Level 2 Award in Agricultural Tractor Driving and Related

			Operations
600/4883/9	City & Guilds	Level 2	Level 2 Award in Compact Tractor Driving and Related Operations
600/4957/1	City & Guilds	Level 2	Level 2 Award in Sit Astride All Terrain Vehicle Handling
600/4689/2	City & Guilds	Level 2	Level 2 Award in the Safe Use of Pedestrian Controlled Mowers
600/4690/9	City & Guilds	Level 2	Level 2 Award in the Safe Use of Ride-on Self Propelled Mowers
600/4670/3	City & Guilds	Level 2	Level 2 Award in the Safe Use of Tractor Mounted Mowers
500/7693/0	City & Guilds NPTC	Level 2	Level 2 Award in Agriculture Machine Maintenance
500/7697/8	City & Guilds NPTC	Level 2	Level 2 Award in Basic Stockmanship and Welfare
600/6303/8	City & Guilds NPTC	Level 2	Level 2 Award in Branch Removal and Crown Breakdown using a Chainsaw
600/6160/1	City & Guilds NPTC	Level 2	Level 2 Award in Chainsaw Maintenance
600/6161/3	City & Guilds NPTC	Level 2	Level 2 Award in Chainsaw Maintenance and Cross-cutting
600/6428/6	City & Guilds NPTC	Level 2	Level 2 Award in Cross-cutting Timber Using a Chainsaw
600/6162/5	City & Guilds NPTC	Level 2	Level 2 Award in Felling and Processing Trees up to 380mm
600/6619/2	City & Guilds NPTC	Level 2	Level 2 Award in Ground Based Chainsaw Operation
500/7889/6	City & Guilds NPTC	Level 2	Level 2 Award in Off Road Driving
600/6417/1	City & Guilds NPTC	Level 2	Level 2 Award in Safe Use of a Powered Pole Pruner
600/6435/3	City & Guilds NPTC	Level 2	Level 2 Award in Supporting Colleagues Undertaking Off-Ground Tree Related Operations
600/0803/9	City & Guilds NPTC	Level 2	Level 2 Award in the Long Distance Transport of Animals by Road- Attendant
600/0307/8	City & Guilds NPTC	Level 2	Level 2 Award in the Long Distance Transport of Animals by Road – Driver
601/5141/9	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Self Propelled, Mounted, Trailed Horizontal Boom Sprayers
601/5142/0	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Variable Geometry Boom or Broadcast Sprayers
601/5143/2	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pelleted or

			Granular Pesticides Using Mounted or Trailed Applicators
601/5144/4	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Boat Mounted Equipment
601/5145/6	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides using Pedestrian Hand Held Equipment
601/5146/8	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides from the Air
601/5147/X	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Mixing and Transferring of Pesticides
601/5148/1	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticide Mists, Fogs and Smokes
601/5149/3	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Dipping of Plant Material in Pesticides
601/5150/X	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Treatment of Seeds with Pesticides
601/5151/1	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides to Plant Material During a Continuous Flow Process
601/5153/3	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Sub Surface Application of Liquid Pesticides
601/5153/5	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Specialist Equipment
500/7692/9	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Use of Sheep Dip
601/8781/5	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe and Responsible Use of Veterinary Medicines
600/0306/6	City & Guilds NPTC	Level 2	Level 2 Award in the Transport of Animals by Road (Short Journeys)
600/6620/9	City & Guilds NPTC	Level 2	Level 2 Award in Tree Climbing and Rescue
100/2000/7	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe Operation of Dumper Truck
100/2001/9	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe Use of Abrasive Wheel Machinery
100/2103/5	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe Use of Plant Machinery
100/1733/1	City & Guilds NPTC	Level 2	Level 2 Certificate of

			Competence in the Safe Use of Turf Maintenance Equipment
601/2259/6	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Use of Aluminium Phosphide for Vertebrate Pest Control
600/6453/5	IMIAL	Level 2	Level 2 Certificate in Land-based Technology
600/6774/3	IMIAL	Level 2	Level 2 Extended Certificate in Land-based Technology
501/1740/3	Lantra Awards	Level 2	Level 2 Award in Animal Transport by Road – Long Journey Attendant
501/1739/7	Lantra Awards	Level 2	Level 2 Award in Animal Transport by Road – Long Journey Driver
501/1738/5	Lantra Awards	Level 2	Level 2 Award in Animal Transport by Road – Short Journey
600/5699/X	Lantra Awards	Level 2	Level 2 Award in Chainsaw Maintenance
600/5701/4	Lantra Awards	Level 2	Level 2 Award in Chainsaw Maintenance and Cross-cutting
600/5700/2	Lantra Awards	Level 2	Level 2 Award in Cross-cut Timber Using a Chainsaw
600/5703/8	Lantra Awards	Level 2	Level 2 Award in Felling and Processing Trees up to 380mm
600/5717/8	Lantra Awards	Level 2	Level 2 Award in Remove Branches and Breakdown Crowns Using a Chainsaw (QCF)
500/7449/0	Lantra Awards	Level 2	Level 2 Award in Safe Working in Agriculture and Production Horticulture
600/5709/9	Lantra Awards	Level 2	Level 2 Award in Supporting Colleagues Undertaking Off Ground Tree Related Operations
600/8391/8	Lantra Awards	Level 2	Level 2 Award in the Safe Use of Aluminium Phosphide for Vertebrate Pest
600/5708/7	Lantra Awards	Level 2	Level 2 Award in Using a Powered Pole Pruner
600/6729/9	Lantra Awards	Level 2	Level 2 Certificate in Land-based Activities
601/5977/7	Lantra Awards	Level 2	Level 2 Award in the Safe Use of Pesticides
601/6562/5	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Hand Held Equipment (QCF)
601/6562/5X	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Hand Held Equipment (QCF) (without Safe Use)
601/6565/0	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Granular Equipment (QCF)

601/6565/0X	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Granular Equipment (QCF) (without Safe Use)
601/6563/7	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Vehicle Mounted Boom Sprayer Equipment (QCF)
601/6563/7X	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Vehicle Mounted Boom
600/8391/8	Lantra Awards	Level 2	Level 2 Award in the Safe Use of Aluminium Phosphide for Vertebrate Pest Control (QCF)
500/9933/4	Pearson BTEC	Level 2	Level 2 Certificate in Agriculture
500/9932/2	Pearson BTEC	Level 2	Level 2 Extended Certificate in Agriculture
501/0122/5	Pearson BTEC	Level 2	Level 2 Extended Certificate in Horticulture
600/4507/3	Pearson Edexcel	Level 2	Level 2 Certificate in Work-based Horticulture
501/0207/2	RHS	Level 2	Level 2 Certificate in Practical Horticulture
500/8295/4	RHS	Level 2	Level 2 Certificate in the Principles of Garden Planning, Establishment and Maintenance

Competence (Nos)	Title
CU 5.2. (T5021690)	Establishing and maintaining effective working relationship with others (Level 2)
CU 9.2. (J5021449)	Plan and maintain supplies of physical resources within the work area (Level 3)

SCHEDULE 2

Article 6

**AWARDS AND CERTIFICATES OF COMPETENCE FOR GRADE 3
WORKERS****Table 2**

Award Code	Awarding Organisation	Level	Title
500/8575/X	City & Guilds	Level 2	Diploma in Agriculture
500/8718/6	City & Guilds	Level 2	Diploma in Forestry and Arboriculture
500/8576/1	City & Guilds	Level 2	Diploma in Horticulture
501/0678/8	City & Guilds	Level 2	Diploma in Land-based Technology
500/6231/1	City & Guilds	Level 2	Diploma in Work-based Agriculture
500/6205/0	City & Guilds	Level 2	Diploma in Work-based Horticulture
501/0302/7	City & Guilds	Level 2	Diploma in Work-based Land-based Engineering Operations
600/7616/1	City & Guilds	Level 2	Diploma in Trees and Timber
601/2331/X	HABC	Level 2	Diploma in Work-Based Horticulture
600/6775/5	IMIAL	Level 2	Diploma in Land-based Technology
601/0608/6	IMIAL	Level 2	Diploma in Work-based Land-based Engineering Operations Power Equipment
600/5109/7	IMIAL	Level 2	Diploma in Work-based Land-based Engineering Operations
500/9547/X	Pearson BTEC	Level 2	Diploma in Agriculture
500/9934/6	Pearson BTEC	Level 2	Diploma in Horticulture
600/3577/8	Pearson Edexcel	Level 2	Diploma in Work-based Land-based Engineering Operations
601/0356/5	RHS	Level 2	Diploma in the Principles and Practices of Horticulture

Table 3

Competence (Nos)	Title
CU 5.2. (T5021690)	Establishing and maintaining effective working relationship with others (Level 2)
CU 9.2. (J5021449)	Plan and maintain supplies of physical resources within the work area (Level 3)

SCHEDULE 3 Article 7

AWARDS AND CERTIFICATES OF COMPETENCE FOR GRADE 4 WORKERS

Tables

Award Code	Awarding Organisation	Level	Title
500/8487/2	City & Guilds	Level 3	Diploma in Agriculture
500/8564/5	City & Guilds	Level 3	Diploma in Forestry and Arboriculture
500/8384/3	City & Guilds	Level 3	Diploma in Horticulture
501/0681/8	City & Guilds	Level 3	Diploma in Land-based Technology
500/6224/4	City & Guilds	Level 3	Diploma in Work-based Agriculture
500/6255/4	City & Guilds	Level 3	Diploma in Work-based Horticulture
501/0399/4	City & Guilds	Level 3	Diploma in Work-based Land-based Engineering Operations
500/8490/2	City & Guilds	Level 3	Extended Diploma in Agriculture
500/8720/4	City & Guilds	Level 3	Extended Diploma in Forestry and Arboriculture
500/8401/X	City & Guilds	Level 3	Extended Diploma in Horticulture
501/0682/X	City & Guilds	Level 3	Extended Diploma in Land-based Technology
500/8388/0	City & Guilds	Level 3	Subsidiary Diploma in Agriculture
500/8724/1	City & Guilds	Level 3	Subsidiary Diploma in Forestry and Arboriculture
500/8385/5	City & Guilds	Level 3	Subsidiary Diploma in Horticulture
501/0694/6	City & Guilds	Level 3	Subsidiary Diploma in Land-based Technology
600/6048/7	City & Guilds	Level 3	90-Credit Diploma in Agriculture
600/5946/1	City & Guilds	Level 3	90-Credit Diploma in Forestry and Arboriculture
600/6115/7	City & Guilds	Level 3	90-Credit Diploma in Horticulture
600/5945/X	City & Guilds	Level 3	90-Credit Diploma in Land-based Technology
601/7448/1	City & Guilds	Level 3	Level 3 Advanced Technical Certificate in Agriculture
601/7452/3	City & Guilds	Level 3	Level 3 Advanced Technical Diploma in

			Agriculture (540)
601/7451/1	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Agriculture (720)
601/7459/6	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Agriculture (1080)
601/7507/2	City & Guilds	Level 3	Level 3 Advanced Technical Certificate in Forestry and Arboriculture
601/7517/5	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Forestry and Arboriculture (1080)
601/7453/5	City & Guilds	Level 3	Level 3 Advanced Technical Certificate in Horticulture
601/7456/0	City & Guilds	Level 3	Level 3 Advanced Technical Diploma in Horticulture (540)
601/7455/9	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Horticulture (720)
601/7454/7	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Horticulture (1080)
601/7463/8	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Land-Based Engineering (1080)
600/6970/3	City & Guilds	Level 3	Diploma in Work-based Trees and Timber
600/7794/3	IMIAL	Level 3	Diploma in Land-based Technology
600/7796/7	IMIAL	Level 3	Extended Diploma in Land-based Technology
600/7795/5	IMIAL	Level 3	Subsidiary Diploma in Land-based Technology
600/5128/0	IMIAL	Level 3	Diploma in Work-based Land-based Engineering
500/8240/1	Pearson BTEC	Level 3	Diploma in Agriculture
500/9449/X	Pearson BTEC	Level 3	Diploma in Forestry and Arboriculture
500/8336/3	Pearson BTEC	Level 3	Diploma in Horticulture
500/8301/6	Pearson BTEC	Level 3	Extended Diploma in Agriculture
500/9448/8	Pearson BTEC	Level 3	Extended Diploma in Forestry and

			Arboriculture
500/8266/8	Pearson BTEC	Level 3	Extended Diploma in Horticulture
500/8242/5	Pearson BTEC	Level 3	Subsidiary Diploma in Agriculture
500/9451/8	Pearson BTEC	Level 3	Subsidiary Diploma in Forestry and Arboriculture
500/8351/X	Pearson BTEC	Level 3	Subsidiary Diploma in Horticulture
600/3550/X	Pearson Edexcel	Level 3	Diploma in Work-based Land-based Engineering
601/7189/3	RHS	Level 3	Diploma in the Principles and Practices of Horticulture
601/8097/3	RHS	Level 3	Diploma in Horticultural Practice
600/2788/5	City & Guilds	Level 4	Certificate in Work-based Agricultural Management
600/2842/7	City & Guilds	Level 4	Diploma in Work-Based Agricultural Business Management
600/2132/9	Pearson BTEC	Level 4	HNC Diploma in Horticulture
601/5485/8	Agored Cymru	Level 4	Certificate in Work-based Horticulture
601/5484/6	Agored Cymru	Level 4	Diploma in Work-based Horticulture
603/0320/7	RHS	Level 4	Diploma in Horticultural Practice

Competence (Nos)	Title
CU 5.2. (T5021690)	Establishing and maintaining effective working relationship with others (Level 2)
CU 9.2. (J5021449)	Plan and maintain supplies of physical resources within the work area (Level 3)

SCHEDULE 4 Article 12 MINIMUM RATES OF PAY

Table

Grade or category of workers	Minimum hourly rate of pay
Grade 1 worker under compulsory school age	£3.47
Grade 1 worker (16 – 24 years of age)	£7.38
Grade 1 worker (aged 25+)	£7.83
Grade 2 worker	£8.29
Grade 3 worker	£8.54
Grade 4 worker	£9.16
Grade 5 worker	£9.70
Grade 6 worker	£10.48
Year 1 Apprentice	£3.93
Year 2 Apprentice (aged 16-17)	£4.21
Year 2 Apprentice (aged 18-20)	£5.90
Year 2 Apprentice (aged 21-24)	£7.38
Year 2 Apprentice (aged 25+)	£8.05

SCHEDULE 5 Articles 30 and 31 ANNUAL LEAVE ENTITLEMENT

Table

Number of days worked each week by an agricultural worker	More than 6	More than 5 but not more than 6	More than 4 but not more than 5	More than 3 but not more than 4	More than 2 but not more than 3	More than 1 but not more than 2	1 or less
Annual leave entitlement (days)	38	35	31	25	20	13	7.5

SCHEDULE 6 Article 36 PAYMENT IN LIEU OF ANNUAL LEAVE

Table

Maximum number of annual leave days that may be paid in lieu							
Days worked each week	More than 6	More than 5 but not more than 6	More than 4 but not more than 5	More than 3 but not more than 4	More than 2 but not more than 3	More than 1 but not more than 2	1 or less

Maximum number of annual leave days under this Order that may be paid in lieu	10	7	3	2.5	2.5	1.5	1.5
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Explanatory Memorandum to the Agricultural Wages (Wales) Order 2018

This Explanatory Memorandum has been prepared by the Department for Energy, Planning and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Agricultural Wages (Wales) Order 2018. I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM

Cabinet Secretary for the Energy, Planning and Rural Affairs

29 March 2018

1 Description

The Agricultural Wages (Wales) Order 2018 (“the 2018 Order”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. The 2018 Order revokes and replaces the Agricultural Wages (Wales) Order 2017 (“the 2017 Order”) with changes which increase the 2017 pay levels for agricultural workers.

The Agricultural Advisory Panel for Wales (the Panel) is an independent advisory body which was established under Section 2 (1) of the Agricultural Sector (Wales) Act 2014 (the 2014 Act) by the Agricultural Advisory Panel for Wales (Establishment) Order 2016 (the Panel Order) on 1 April 2016.

The Panel Order sets the number of Panel members at seven; two representatives from UNITE the Union, one representative from the Farmers’ Union of Wales, one representative from National Farmers Union Cymru and three independent members, including an independent Chair. The independent members and Chair are selected via the Public Appointment process.

Article 3(2) of the Panel Order sets out the Panel’s functions. One of the key functions of the Panel is to review agricultural wages and prepare agricultural wages orders in draft, to consult upon them and subsequently submit them to the Welsh Ministers for approval. In accordance with Section 4(1) of the 2014 Act, the Welsh Ministers have the power to a) approve and make the order by Statutory Instrument, or b) refer the order back to the Panel for further consideration.

The Panel reviewed the level of minimum hourly rates and other agriculture related allowances and benefits prescribed in the 2017 Order and, in accordance with their functions, prepared the 2018 Order which increases minimum hourly rates for all Grades and categories of agricultural worker. The panel conducted a targeted consultation on the new proposed rates for the draft 2018 Order in the autumn of 2017.

The intention of the Panel is to have the new Order in force on 1 April, the same date the NLW and NMW increases take effect. The Panel’s aim is to align the agricultural minimum wage (AMW) increase with NLW and NMW changes, avoiding employers and employees having to cope with a transitional period during which the NLW/NMW would override the AMW levels in Wales.

2 Matters of special interest to the Constitutional and Legislative Affairs Committee

Breaching the 21 day rule is proposed to ensure the 2018 Order comes into force on the day after it is made. This will minimise the time taken to bring the new AMW rates into force.

A breach of the 21 day rule is thought necessary and justifiable in this case on the basis it will bring the uplifted agricultural wage rates in line with changes in the National Minimum Wage (NMW) and National Living Wage (NLW), thereby minimising the time period some agricultural workers in Wales will be subject to the UK NMW and NLW levels, rather than the uplifted AMW rates.

Any delay would further penalise those agricultural workers who are currently being paid lower rates of pay than they would have anticipated receiving from 1 April 2018.

3 Legislative background

The 2018 Order is made pursuant to sections 3, 4(1) and 17 of the 2014 Act.

Section 3(1) provides an agricultural wages order is an order making provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. Pursuant to section 3(2), an agricultural wages order may include provision specifying (among other things) the minimum rates of remuneration for agricultural workers.

Section 3(3) provides an agricultural wages order may specify different rates and make different provision for different descriptions of agricultural worker.

Section 4(1) stipulates the Welsh Ministers may, after receiving a draft agricultural wages order from the Panel, either approve and make the order or refer the order back to the Panel for further consideration and resubmission.

Section 17(1) provides that any power of the Welsh Ministers to make an order is exercisable by statutory instrument and includes power to make such incidental, consequential, supplemental, transitional, transitory or saving provision as the Welsh Ministers consider necessary or expedient for the purposes of the 2014 Act.

Pursuant to section 17(3) of the 2014 Act agricultural wages orders are subject to the negative procedure.

4. Purpose & intended effect of the legislation

The statutory AMW regime in Wales safeguards employment conditions and allowances unique to the agricultural sector. It recognises and rewards qualifications and experience through a six grade career structure and provides remuneration rates for each grade and category of worker.

Given the distinct nature of agricultural employment, including seasonality, dominance of casual employment and the use of on-farm accommodation, it is considered desirable to have a separate system of wage setting and employment provisions. This was previously managed by the Agricultural Wages Board (AWB) for England and Wales until its abolition (without reference to the Welsh Government) by the UK Government on 25 June

2013. The Panel carries out similar functions to the AWB by reviewing wages and other employment conditions of agricultural workers in Wales. In addition, the Panel's remit includes promoting skills and career development in the agricultural sector.

The structure of agricultural wages orders rewards qualifications and experience in agriculture through a six grade structure and provides remuneration rates for each grade and category of worker.

Grade 1 is seen as a transitional Grade. The statutory provisions allow Grade 1 workers to gain the necessary qualifications to move to Grade 2 following 30 weeks of continuous employment, at the expense of their employer. The differential between Grade 1 and Grade 2, and the subsequent higher grades, provides an incentive for the further up-skilling of the agricultural workforce and helps set clear career paths for all those employed in agriculture.

Agricultural wages orders contain provisions for apprentices who undertake training under government approved apprenticeship schemes. These provisions support succession, skills development and skills retention within the industry, all of which are considered crucial for the future success of agriculture in Wales. Attractive rates offered to apprentices can help the sector to become a viable and appealing career choice.

The 2018 Order ensures the Welsh agricultural sector operates in accordance with provisions that are in step with current economic conditions, including increased cost of living and changes to the national minimum wage and national living wage levels.

The 2018 Order will replace the 2017 Order and increase the 2017 minimum pay levels for all categories and grades of agricultural workers in Wales. The Panel agreed a 4% increase for Grade 1 workers of compulsory school age, an increase of 5% for Grade 1 workers aged 16-24 and an increase of 10% for Grade 2 workers. The rates of Grade 1 and Grade 2 were agreed in the context of the national minimum wage and national living wage increases. The Panel agreed increases of 4-7% for workers employed at Grades 3-6 and as apprentices.

The Panel proposed the following increases for the Agricultural Wages (Wales) Order 2018.

Grade	2018 rates	2017 rates
Grade 1 Worker of compulsory school age (13-16)	£3.47	£3.34
Grade 1 Worker (16-24 years of age)	£7.38	£7.06
Grade 1 Worker (aged 25+)	£7.83	£7.51
Grade 2 – Standard Worker	£8.29	£7.54
Grade 3 – Lead Worker	£8.54	£8.22
Grade 4 – Craft Grade	£9.16	£8.82
Grade 5 – Supervisory Grade	£9.70	£9.34
Grade 6 – Farm Management Grade	£10.48	£10.09
Year 1 Apprentice	£3.93	£3.78
Year 2 Apprentice (aged 16-17)	£4.21	£4.05
Year 2 Apprentice (aged 18-20)	£5.90	£5.60
Year 2 Apprentice (aged 21-24)	£7.38	£7.05
Year 2 Apprentice (aged 25+)	£8.05	£7.50
Changes proposed for allowances -		
The dog allowance- per dog to be paid weekly where an agricultural worker is required by their employer to keep one or more dogs	£8.02	£7.72)
The night work allowance for each hour of night work	£1.52	£1.46
The birth and adoption grant	£63.09	£60.72

Agricultural wages orders provide a range of additional agriculture related allowances. Some of these are linked to the appropriate basic pay rates, such

as overtime rates and on-call allowance. These provisions acknowledge the unique nature of agricultural work, for example many workers are required to work above their contracted hours during busy periods. The 2018 Order will maintain overtime rates at 1.5 times above the applicable basic rates – this will apply to all workers and apprentices.

There are rate rises proposed for the Dog allowance: proposed rate £8.02 (2017 Order £7.72), the Night work allowance: proposed rate £1.52 per hour of night work (2017 Order £1.46) and the Birth and Adoption grant: proposed rate £63.09 for each child (2017 Order £60.72)

The Dog and Night Work Allowances recognise that workers often require a dog to assist them in carrying out their duties and that agricultural workers can be required to work at times outside the normal working day for example to assist in maintaining animal welfare standards.

The Dog allowance is paid weekly where an agricultural worker is required by their employer to keep one or more dogs. The Night work supplement is paid for each hour of night work and is applicable to work undertaken between 7pm in the evening of a given day and 6am the next morning and is payable on top of the worker's applicable hourly rate. It does not apply for the first two hours of night work.

The Birth and Adoption grant is a payment that an agricultural worker is entitled to receive from their employer on the birth of their child or upon the adoption of a child. The grant is payable on production of the child's Birth certificate of Adoption Order.

5. Consultation

The Panel met to decide whether to propose changes to the 2017 wages order on 9 September. A targeted consultation on their proposals was conducted 28 September – 3 November 2017. The proposals were emailed to an extensive list of people and organisations and were made available on the Panel's web platform. Copies of the consultation were also available on request.

Key stakeholders, including the farming unions, UNITE, agricultural colleges and bodies such as the Association of Labour Providers were included. Panel members were encouraged to share the proposals throughout their networks.

Four responses were received. There was overall support for the proposals but significant discontent from the NFU on the proposed rate rises which they maintained would be difficult to afford for the industry. The Panel met to discuss the responses to the consultation on 19 November and decided to submit their proposals to Welsh Government.

Regulatory Impact Assessment of the Agricultural Wages (Wales) Order 2018

1. Proposed changes in AWO 2018

The Panel proposes to change the minimum hourly rates of pay as follows.

Grade or category of worker	Minimum hourly rate of pay
Grade 1 worker under compulsory school age	£3.47
Grade 1 worker (16 – 24 years of age)	£7.38
Grade 1 worker (aged 25+)	£7.83
Grade 2 worker	£8.29
Grade 3 worker	£8.54
Grade 4 worker	£9.16
Grade 5 worker	£9.70
Grade 6 worker	£10.48
Year 1 Apprentice	£3.93
Year 2 Apprentice (aged 16-17)	£4.21
Year 2 Apprentice (aged 18-20)	£5.90
Year 2 Apprentice (aged 21-24)	£7.38
Year 2 Apprentice (aged 25+)	£8.05

Dog allowance: £8.02 (2017 Order £7.72)

Night work allowance: £1.52 per hour of night work (2017 Order £1.46)

Birth and adoption grant: £63.09 for each child (2017 Order £60.72)

4. Impact assessment

4.1 Summary of Policy options

In this impact assessment, two policy options are considered, reflecting the baseline arrangements (defined below) and the recommendations negotiated by the Panel. Broad categories of costs and benefits are identified. Where sufficient data are available, costs and benefits are quantified for a 12-month period (until which point it is assumed that the new Agricultural Wage Order 2019 will come into effect)¹. However, constrained by data availability, it is not possible to produce a fully quantified analysis of costs and benefits. Some of the costs and benefits are discussed qualitatively.

Option 1: Do Nothing. This is the baseline policy option to maintain the minimum wage rates for agricultural workers at 2017 levels in accordance with the provisions of the Agricultural Wages Order (Wales) 2017. In addition, the 2014 Act provides provisions that hourly wage rates cannot be below the statutory UK NMW/NLW. In the baseline scenario, the minimum wage rates are adjusted to the 2018 NMW/NLW rates where the rates in AWO 2017

¹ Cumulative effects across years arising from AWOs are not considered within this RIA.

would fall below the NMW/NLW from April 2018. The costs and benefits will be measured against this baseline policy option.

An important context to this baseline is that it maintains the long standing and well-known AMW regulatory regime (preserved by the 2014 Act) for relevant agricultural workers, which safeguards employment conditions and allowances unique to the agricultural sector. The AMW regime recognises and rewards qualifications and experience through a six grade career structure and provides remuneration rates for each grade and category of worker. Having a separate system of wage setting and employment provisions was justified on the basis of the distinct nature of agricultural employment, including seasonality, dominance of casual employment and the use of on-farm accommodation. This system was previously managed by the Agricultural Wages Board (AWB) using Agricultural Wages Orders (AWO). The final wages order issued by the AWB in 2012 (prior to its abolition) was replaced by the interim AWO 2016 in April 2016 and AWWO 2017 to ensure that the agricultural sector in Wales operated under provisions which would be in step with changes in economic conditions, until the Panel was set up and able to commence its work. The previous regulatory impact assessments suggested that the benefits of AWO 2016 and AWO2017 include:

- Assisting the effective functioning of the agricultural sector by supporting the existence of a well-trained and skilled workforce which in turn can increase productivity and efficiency.
- Ensuring wage progression for agricultural workers and supporting rural communities - which is an issue of importance within the context of the Welsh Government's Tackling Poverty agenda - through effects on household incomes and improving the skills base of agricultural workers.
- Support agricultural workers and apprentices to gain skills and qualifications, which can improve their job prospects in the future.

The AMW regime also sets rates for young workers under the age of 16 and apprentices as part of a minimum wage rate structure intended to support entry and development of an appropriately skilled workforce. Having attractive minimum wage rates for these categories of workers can help encourage the younger generation to choose a career in agriculture.

Retaining these identified benefits of having an AMW regime is likely to be particularly important when skill shortage is a prevalent issue for the agriculture sector. More generally, as stated in the Agricultural Sector (Wales) Bill, the benefits of the AMW regime include:

- *It provides a structure to reward skill and experience and maintains a balanced and well-functioning sector in Wales.*
- *It recognises that the agricultural sector is different from other sectors and acknowledges the nature of seasonal work by having special provisions for flexible workers and safeguards the succession of skilled workers by specifying provisions for apprentices and trainees.*

- *It helps farmers and farm workers to specify the terms and conditions of their employment and avoid potential disputes and the need for lengthy negotiations with individuals.*

It is important to note that the baseline option represents a situation where the AMW regime exists. Therefore, the costs and benefits of policy alternatives relative to this baseline do not include the benefits or costs associated with the existence of the Agricultural Minimum Wage (AMW) regime. Instead, it is an assessment of additional costs and benefits of AWO 2018 relative to the AWO 2017 scenario which also takes account of the NMW/NLW changes from April 2018.

Option 2: Implementing New Order. This is the policy alternative, which would involve replacing the current Order (2017) with a new Order (2018). The new order includes all the recommendations from the Agricultural Advisory Panel for Wales. In particular, the new order includes the following key changes to the minimum rates for different categories of workers (see Table 1).

Table 1: Summary of proposed changes to the minimum wage rates by grade

Grade or category of worker	AWO (2017)	AWO (2018)	% increase from 2017 rate
Grade 1 worker under compulsory school age	£3.34	£3.47	4%
Grade 1 worker over compulsory school age (16-24)	£7.06 (will rise to £4.20 to £7.38 in 2018 depending on age)*	£7.38	5%
Grade 1 work (aged 25+)	£7.51 (will rise to £7.83 in 2018)	£7.83	4%
Grade 2 worker	£7.54	£8.29	10%
Grade 3 worker	£8.22	£8.54	4%
Grade 4 worker	£8.82	£9.16	4%
Grade 5 worker	£9.34	£9.70	4%
Grade 6 worker	£10.09	£10.48	4%
Year 1 Apprentice	£3.78	£3.93	4%
Year 2 Apprentice (aged 16-17)	£4.05	£4.21	4%
Year 2 Apprentice (aged 18-20)	£5.60	£5.90	5%
Year 2 Apprentice (aged 21 -24)	£7.05	£7.38	5%
Year 2 Apprentice (aged 25+)	£7.50	£8.05	7%

Note *: There are NMW rates from April 2018-£7.38 for workers aged 21 to 24; £5.90 for workers aged 10 to 20; £4.20 for workers aged under 18.

These increases of 4-10% compare to average wage inflation of 2.2% in the UK between November 2016 and November 2017 (the latest data available)².

The Panel considered a range of statistical information including published data on cost of living increases and the retail index as well as the projected rises to the National Minimum Wage and the National Living Wage when discussing their recommendations for the Order.

- **Grade 1 worker under compulsory school age**

The pay rate for Grade 1 workers under compulsory school age will increase to by 4% to £3.47 in the proposed AWO 2018. Young workers aged between 13 and 16 are only allowed to work part time, specifically 12 hours per week during term time and 25 hours per week during school holidays. However, as there is no data on the number of workers within this category, it is not possible to quantify the changes in total labour costs or earnings.

- **Grade 1 worker over compulsory school age (16-24)**

There hourly minimum wage rate for Grade 1 workers aged between 16 and 24 was £7.06 within AWO 2017. In the proposed AWO 2018, this will be set at £7.38 (NMW adult rate). The proposed rate represents 5% increase from the rate for 2017. However, as the 2014 Act provides provisions that hourly wage rates cannot be below the statutory UK NMW, the AWO 2017 rate would increase to £7.38 (the statutory NMW rate) from April 2018 in any case. Therefore, there would be no difference to the baseline as the proposed rate just matches the NMW level in 2018.

- **Grade 1 workers (aged 25+) and Grade 2-6 workers**

Compared to the hourly rates in 2017 AWO, the proposed changes in the AWO (Wales) 2018 includes 10% increases in the minimum wage rate for Grade 2 workers and 4-5% for workers in other grades.

The biggest increase in minimum wage rates is for Grade 2 workers.

For grade 1 workers aged over 21, the hourly wage rate proposed in AWO 2018 just matches the level of NMW from April 2018. Therefore for this group of workers, there will be no change from the baseline.

For Grade 1 workers aged 16-20, the hourly rate will go up by 5% from £7.06 to £7.38 and young workers within this grade would benefit from this increase. However, the benefit cannot be quantified due to lack of data on the agricultural workers by grade or age in Wales. Given that Grade 1 is considered to be a transitional grade with the right to appropriate training to reach Grade 2 after 30 weeks, we assume that the number of workers in this Grade and the number of workers aged 16-20 in this grade will be small (on a full-time or part-time basis).

² Average Weekly Earnings time series, ONS

Traditionally, the AWB maintained a pay differential between Grade 1 and 2 at around 10% in order to underline the transitional nature of Grade 1 (initial Grade) and encourage workers' entry to Grade 2 (standard Grade).

Within the proposal of AWO 2018, the difference between the minimum wage rates for Grade 1 (over 25) and Grade 2 becomes smaller compared to those in AWO 2012 and AWO 2016 (see Table 2) but larger than that in AWO 2017. In AWO 2018, the proposed minimum wage rate for Grade 2 workers is 6% higher³ than that for Grade 1 workers aged 25 and above.

Table 2: Hourly Wages Rates by Grade in AWO 2012, 2016, 2017 and 2018.

Grade	Hourly Wage Rates				% Paid above the previous grade			
	2012	2016	2017	2018	2012	2016	2017	2018
Grade 1 worker (aged 25+)	6.21	£7.2	£7.51	£7.83	-	-	-	-
Grade 2 worker	6.96	£7.39	£7.54	£8.29	12%	10%	0.4%	6%
Grade 3 worker	7.66	£8.12	£8.22	£8.54	10%	10%	9%	3%
Grade 4 worker	8.21	£8.72	£8.82	£9.16	7%	7%	7%	7%
Grade 5 worker	8.7	£9.23	£9.34	£9.70	6%	6%	6%	6%
Grade 6 worker	9.4	£9.97	£10.09	£10.48	8%	8%	8%	

Source: Hourly wage rates are from AWO 2012, 2016, 2017 and the AWO 2018 proposal. Percentage paid above the previous grade are calculated from minimum hourly wage rates.

Similarly, the difference between the minimum wage rates for Grade 2 and Grade 3 also becomes smaller at 3%. In previous AWOs the difference between the two grades was around 10%. This change means may lead to reduced incentives for Grade 2 workers to upskill so as to progress to Grade 3 although some workers may still be incentivised to pursue training to reach even higher grades.

• Year 1 and Year 2 Apprentice

The minimum wage rates for the Y1 and Y2 apprentices within AWO 2018 are higher than the national minimum wage rates for Apprentice which other sectors would abide to. This will help the agricultural sector to become a viable and appealing career choice.

The hourly pay rates for Y1 Apprentice and Y2 Apprentice under 24 years old in the proposed AWO 2018 are 4-5% higher than the AWO 2017 rates.

³ The wage rates compared also reflects changes in NMW/NLW rates from April 2017.

The hourly rate (£8.05) for Y2 Apprentices aged 25 and older in AWO 2018 is 7% higher than the AWO 2017. It should be noted that this hourly wage rate is even higher than that (£7.83) for Grade 1 workers proposed in 2018.

However, as there is no data available on the number of apprentices working in agriculture, the impact of changes in minimum wage rates of these Apprentice grades cannot be quantified.

- **Changes in other provisions**

In addition to the changes in minimum wage rates for different types of agricultural workers, there are a few other changes in other provisions (see Table 3). These include changes to dog allowance, night allowance and birth and adoption grants, all of which has a 4% increase from the AWO 2017 rate.

Table 3: Changes to other provisions

Type	AWO 2017	AWO 2018	% increase
Dog allowance	£7.72	£8.02	4%
Night allowance	£1.46	£1.52	4%
Birth and adoption grants	£60.72	£63.09	4%

The costs and benefits of these changes cannot be quantified due to lack of data.

- **Summary of quantification of wage costs/earnings**

Due to data availability, the breakdown by grade is not available for many of the worker groups. Therefore, only the costs and benefits associated with agricultural workers for Grade 1 (aged 25+) to Grade 6 were estimated for both basic pay and overtime pay in the RIA where the number of workers in each grade were estimated based on data from Farm Labour and Wage Statistics (Defra, 2012)⁴. These estimates were based on Defra's costings model and the hours worked per week collected from the Earnings & Hours survey, run by Defra's Economics and Statistics Programme. The hours were broken down into basic and overtime, and the calculation of the wage costs reflected this. Although the data is dated, it represented the only available source of data that contained break down information by grade of workers. It should also be noted that this was not Wales specific data and represented the labour structure by grade of workers for England and Wales. Therefore, the assumption was made that the labour structure in Wales was similar to the overall estimate made by Defra in their survey.

The changes in costs or benefits related to other categories of workers are expected to be very small due to small number of people involved in those

⁴ Available at:

<http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf>

categories, which include Grade 1 workers aged between 16-24 and Year 2 Apprentice.

- **Enforcement cost**

In terms of enforcement costs, it is anticipated that administrative costs accruing to the Welsh Government would be broadly similar under Agricultural Wages Order 2018 option as the Welsh Government is enforcing the Orders introduced under the 2014 Act.

The government enforcement costs associated with the 2014 Act for enforcing the provisions of the 2012 wages order was estimated at around £3,000 per year in the previous RIAs of the wages orders in 2016 and 2017. This was based on a reactive enforcement mechanism, where the Welsh Government would investigate any claims of potential underpayment and if necessary, issue enforcement notices. There were 3 formal cases needing varying levels of investigation 2016-2018. It is difficult to predict the number of cases arising, or their precise nature. Enforcement costs continue to be based on the assumption that there are two cases per year to investigate.

No separate costing to Welsh Government associated with inspection/enforcement work should the Act be continued. It is difficult to predict accurately the number of cases that may come forward but these will be met from existing provision.

- **Administrative cost**

There would be an annual cost involved with the operation of the Panel should the Act be continued. This would include expenses incurred by the Panel individually, meeting room costs, legal and research costs. This is estimated to be an average annual cost of approximately £60,000

In addition to the cost of compliance, there will be a cost to farm businesses for adjusting to the requirements of the new AWO and changes in associated calculations in Wales.

Farmers will need to be familiar with both the Welsh AWO provisions and UK labour legislation (for example, in relation to the national minimum wage) to ensure that workers are being correctly remunerated.

It is assumed that each employer would need one hour⁵ to familiarise themselves with the new Order and make adjustments to pay rates and other provisions. Based on data from the Office for National Statistics (ONS)' Annual Survey of Hours and Earnings (2017)⁶, it is assumed that the average

⁵ This is consistent with the estimates used in the RIA of abolishment of AWB by Defra and the RIA of the Act 2014.

⁶ Estimates for 2017 (provisional) of paid hours worked, weekly, hourly and annual earnings for UK employees by gender and full/part-time working by 2 digit Standard Industrial Classification 2007. Industry (2 digit SIC) - ASHE: Table 4.6a. Available at:

cost per hour of a farmer's time is £11.32 (figure for all employees in the agriculture, forestry and fishing industry, excluding overtime pay). The median value of agricultural labour cost from the same source was £9.47 per hour. Inclusion of non-wage labour costs, such as employer's national insurance and pension contributions would serve to increase such cost estimates. In addition, the hourly rate used here is an average/median value for all farm workers. In reality, however, those whose time is involved are likely to be the farmer owners or farm business managers whose wage rates are likely to be at the higher end of the wage rate distribution.

According to ONS statistics on business population by region and by sector, there are 14,490 businesses in agriculture, forestry and fishing sector in Wales in 2016 with 3,170 businesses being employers⁷. The administrative costs to farm businesses are therefore estimated at £36k for Wales. If using the median value for the labour cost (£9.47 per hour), the total admin costs to farm businesses are estimated at £30k. The estimated cost would be higher if the wage rates for farm managers/owners were used and non-wage costs were reflected in the rates. However, it should also be noted that not all the 3,170 agricultural businesses who employed labour are using the AWO but it is not known how many of these businesses being users of the AWO.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry2digitsicashetable4>

⁷ Table 21 Number of businesses in the private sector and their associated employment and turnover, by number of employees and industry section in Wales, start 2016 within statistics on BUSINESS POPULATION ESTIMATES FOR THE UK AND REGIONS 2016. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2016>.

1.1 Evidence Review

In this RIA, we have reviewed the evidence presented in the previous RIAs of AWO 2016, AWO 2017 and considered additional literature where relevant. Our conclusion is that the key points made in the previous RIA on the minimum wage impacts are still valid, which are summarised as follows. However, it should be noted that the evidence was focused on the impact of minimum wages while the economic evidence on the effects of the multi-grade minimum wage structure (i.e. multiple wage floors) is rather limited.

- *Employment:* Provided minimum wage levels are set cautiously, their negative effect on employment levels within affected sectors can be minimised. Some evidence has been found for a reduction in hours worked, but this is not conclusive. There is also evidence suggesting that the introduction of the minimum wages was associated with an increase in labour productivity. On balance, the evidence suggests that there are limited effects of the introduction of the minimum wages on employment. This is especially the case where the minimum wage rates have been set incrementally within context of economic/labour market conditions.
- *Wage rates and structure:* If minimum wages are set above current market rates, they act to raise the wage floor, tending to compress the wage structure by raising the wages of the lowest paid relative to others. The effect may be transmitted up the pay structure, leading to wage rises for those being paid more than the statutory minimum, although the extent to which this has taken place has varied across different minimum wage regimes.
- *In-work poverty:* Minimum wages tend to benefit the lowest-earning working households, thus having some positive impact on in-work poverty. This positive impact, however, may not necessarily positively impact on low earning households. Overall, the impact of minimum wages on poverty is very small. The Institute for Fiscal Studies⁸ has found that the National Living Wage will raise household incomes by less than 1% on average, even for poorer households.
- *Company level impacts:* Research suggests that firm responses to involuntary increases in wage costs can include increasing prices, increasing labour productivity⁹, accepting reduced profits, organisational changes (such as tighter human resource practices, increased performance standards at work, and better management

⁸ Institutes for Fiscal Studies (IFS), 2016. Living Standards, Poverty and Inequality in the UK: 2015-16 to 2020-2. IFS Report R114.

⁹ Research on labour productivity growth in general tends to demonstrate linkages between the NMW and productivity that are positive but not statistically significant. [Source: David Metcalf, 'Why has the British National Minimum Wages had Little or No Impact on Employment?'. Journal of Industrial Relations, Vol 50:3, pp. 489-512 (pp. 501-502).]

practices), efficiency wage¹⁰ and training responses (increasing training provisions to employees). However, the relationships between company level responses and the pay structure with multiple minimum wage levels are an under-explored area within the literature.

1.2 Costs & benefits

This section assesses the potential costs and benefits for both policy options. However, significant limitations exist across data and methodology. Specifically, disaggregated up to date data for Wales are not always available and few methodologies exist to demonstrate the relationship between employment, business performance of the agricultural sector and minimum wages. As a result, some impacts cannot be quantified with any degree of accuracy. The quantification was focused on the impact on wage costs/earnings for Grade 1-6 agricultural workers where disaggregated data are most available. However, the distribution by grade of workers was based on Defra study in 2012 which was not Wales specific data. The impact on other categories of workers or the impact of changes in other allowances generally affect very small groups of workers and the impacts are expected to be minimal. Due to lack of detailed data on these groups, the impacts of changes related to them were not estimated. However, the administrative costs to the farmers are estimated for their time to familiarise themselves with and make adjustments in accordance to AWO 2018. Where estimates are provided, they are indicative, with Appendix A containing the detailed calculations of how these estimates were derived.

In terms of minimum wage rate changes, the Agricultural Wages (Wales) Order 2018 represents a rise of 4-6% rise for agricultural workers within Grade 2-6. The most significant changes in pay rates are for Grade 2 agricultural workers, which represent a 6% increase from the AWO 2017 level at April 2018. This affects over 3,766 workers (28% of the total workforce)¹¹ in this Grade (with 80% of whom being part-time and casual workers) out of the 13,621 paid agricultural workers in Wales in 2016.

As a result, this RIA takes the following approach to assessing each option:

- **Option 1:** Baseline option.
- **Option 2:** Provides more detailed estimates as to the impact of changes in minimum wage levels for Grades 1 to 6, aiming to calculate additional impacts that directly relate to Option 2.

¹⁰ The efficiency wages are based on the notion that wages do not only determine employment but also affect employees' productive behaviour or quality. Under certain conditions, it is optimal for employers to set compensation above the market clearing level in order to recruit, retain or motivate employees.

¹¹ Calculated based on the number of agricultural workers in Wales and distribution by grade of workers from Defra's estimates in 2012 and Agricultural Statistics for Wales (2016).

Option 1: Do nothing

This is the baseline option and the costs and benefits associated with this 'do nothing' option are only estimated to measure the difference between this option and the policy alternative.

Option 2: Introducing Agricultural Wages (Wales) Order 2018 to replace AWO 2017.

1: Impact on Employment

Standard neo-classical theory predicts that minimum wage floors (above market clearing levels) will reduce labour demand (reducing employment levels or hours), but to date the large number of studies examining the employment impacts of the NMW/NLW suggest that labour demand has remained broadly unchanged despite this legislated rise in earnings for the lowest paid¹². This is consistent with the findings from the literature review in the previous RIAs of AWO 2016, AWO 2017 for Wales.

In the previous RIAs, employment effect was estimated using a minimum wage elasticity of -0.19 (an average value from the literature).

The agricultural labour force in Wales during 2016 totalled 53,524 people, with 13,621 of these being employed as farm workers (see in Table 7 Appendix A). No data is available as to the proportion of the total farm workers in each grade in Wales. However, such data is available for the UK as a whole for 2012 from Defra which is based on historic data and assumptions. The estimates from the Defra study can be combined with the 2016 data for the total agricultural labour force in Wales to provide crude estimates of workforce grade composition (see in Table 8 Appendix A). It is estimated that some 3,148 workers may be within Grade 1, 7,550 workers within Grade 2 and some 2,900 workers within Grades (3-6).

Based on these estimates and an application of the mean elasticity estimate (0.19), it is estimated that there would be a reduction in employment of 132 farm workers¹³ (see Table 15 in Appendix B for detailed calculations). It should be noted that these minimum pay rate increases are not the full difference between AWO 2017 and AWO 2018; instead, it has taken account of forthcoming increases in NMW and NLW from April 2018. If using the median value of elasticity coefficient -0.03, the reduction in employment would be 21 people (see Table 16 at Appendix B).

In terms of reductions to hours worked, some evidence suggests that it is likely that some farm businesses will seek to absorb higher labour costs

¹² Riley, R. and Bondibene, C. (2015). Raising the Standard: Minimum Wages and Firm Productivity. National Institute of Economic and Social Research.

¹³ The number of workers reduced = $0.19 \times 0.13\% \times 3859(\text{Grade } 1) - 0.19 \times 0.5\% \times 9257(\text{Grade } 2) - 0.19 \times 1.1\% \times 3539(\text{Grade } 3-6) = 17$

through reducing the number of hours worked in addition to other effects on employment, although this cannot be estimated with any degree of accuracy.

2: Earnings

In 2012, Defra published a labour force model which was used to calculate gross wage costs at a UK level. The estimated additional costs of the proposed pay rate increases for each worker type (full time, part time and casual) have been calculated by multiplying the increase per hour for the respective grades, the number of hours worked per week, the number of weeks worked per year and the number of workers in the industry (not adjusted to taking account of non-wage labour costs). There are separate costings for basic and overtime. As disaggregated data by grade of workers for Wales were not available, the cost estimates are based on these 2012 UK assumptions combined with 2016 agricultural labour force data for Wales (see Table 7 to Table 10 in Appendix A) of changes in gross annual wage costs for Option 2 relative to the baseline option. These estimates are also provided in Table 4, which suggests that the changes in costs for Option 2 are estimated at £5.5million with the largest impact from Grade 2 workers. Although the basis used to estimate the number of workers in each grade, the number of hours worked per week and the number of weeks worked per year is partly relying on data from Defra cost model which is dated back to 2012, it still represents the best estimate that is available for calculating the additional labour costs as a result of pay rate rises.

It should also be noted that the difference in minimum wage rates between Option 1 and 2 is not the full difference between AWO 2017 and AWO 2018. It also takes account of forthcoming statutory NMW and NLW from April 2018.

Table 4: Estimated changes in annual wage costs, waged agricultural workforce, Wales 2018 (a-c)

Grade	Full-time (£)		Part-time (£)		Casual (£)		Total (£)
	Basic	Overtime	Basic	Overtime	Basic	Overtime	All
1	£0	£0	£0	£0	£0	£0	£0
2	£1,376,343	£324,662	£1,176,080	£0	£459,092	£75,360	£3,411,538
3	£220,951	£52,120	£90,905	£0	£0	£0	£363,976
4	£782,536	£184,591	£151,778	£0	£0	£0	£1,118,905
5	£303,808	£71,665	£43,829	£0	£0	£0	£419,302
6	£149,603	£35,289	£15,827	£0	£0	£0	£200,719
Total (£)	£2,833,242	£668,326	£1,478,419	£0	£459,092	£75,360	£5,514,440

Notes:

(a) Data assumes that workers are earning no more than the hourly minimum.

(b) Defra assumed that part-time workers do not work overtime.

(c) Totals may not sum due to rounding.

Source: Authors' calculations

Option 2 may create a wage difference between Wales and England, potentially disadvantaging farmers who largely compete with producers based in England, as is the case for the dairy industry. More generally, this would affect actual wage rates/terms and mobility of labour and potentially increase to the cost base. This relative increase to the cost base may accentuate the degree to which decreases in profits/ hours worked, or increases in prices may take place. However, farmer businesses in Wales are generally price-takers with limited power to influence the price of their goods and there will be limited scope to pass on cost increases via price rises. Despite this, it is reasonable to conclude that the increased cost base associated with Option 2 will have some negative impact on the sector's competitive positioning with those businesses located in England, but that such impacts are likely to be relatively marginal in overall terms. Changes in market conditions may lead to structural changes within the sector rather than differences in wage rates, although other market conditions will also apply to farm businesses elsewhere.

As there are some uncertainties around the distribution of farm workers by grade, sensitivity analysis was carried out to test the impact on the results.

The distribution by grade was based on data from Defra which was not Wales specific data and has not been updated after 2012. Three tests were carried out varying the percentages for Grade 2, Grade 4 or Grade 5 full-time workers. Composition 1 is the baseline; composition 2 increasing Grade 2 workers by 10% and reducing Grade 4 workers by 10%; composition 3 increasing Grade 2 workers by 10% and reducing Grade 5 workers by 10%¹⁴. For composition 1, the wage cost of Option 2 is estimated at £5.51 million. The wage cost based on composition 2 is £5.63million and £5.61 million based on composition 3. Collection of data on farm workers by grade in Wales would help improving accuracy of estimates.

composition 1			
Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%
Grade 2	39%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

Composition 2			
Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%

¹⁴ 10% is an arbitrary number. As the actual distribution by grade for Wales is not known, a 10% redistribution between grades was assumed and deemed to be big enough to test sensitivity.

Grade 2	49%	63%	61%
Grade 3	9%	7%	
Grade 4	20%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

composition 3			
Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%
Grade 2	49%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	1%	3%	
Grade 6	5%	1%	

1.3 Impact on prices, productivity and profitability

As well as impacting on total wage costs and labour inputs, increases to the cost base caused by additional wage costs may be expected to impact on farm businesses – and three issues profits, prices and productivity are briefly discussed. The extent to which these outcomes will occur in relation to Option 2 depends on a broad range of factors affecting individual farm businesses. Existing literature is unclear on the linkages between minimum wages and these factors, which are therefore assessed qualitatively.

In relation to output prices, farms in Wales are generally price-takers with limited power to influence the price of their goods. While such influence will vary according to the type and nature of the product being sold, Welsh farmers are generally operating in a national or international market with relatively limited product differentiation. When combined with current market pressures, this means that passing on cost increases via price rises seems unlikely, although farms in some sectors may be more likely than others to have a marginally greater ability to increase prices.

There is limited evidence as to the linkage between minimum wage structure and labour productivity on farms in Wales. The scope available to each farm to exploit productivity improvements will depend to a large extent on issues such as technology adoption, characteristics of the farm and farmer and any scope for economies of scale. Overall, there is insufficient evidence to assess the likely outcomes in terms of productivity implications.

In the absence of other adjustments, increased wage costs would be expected to put downward pressure on profits (reflecting the transfers to agricultural workers). In relation to profitability, there is great variation between farms in Wales and the extent of impacts will vary across farms.

1.4 Cost: government enforcement

It is considered that the enforcement cost related to Option 2 would remain at similar levels with Option 1.

1.5 Benefits

1: Impact on Earnings

Under the previously explained assumptions, the proposed changes in AWO 2018 minimum wage rates are estimated would raise total wages received by agricultural workers by some £5.5 million per annum. It should be noted that these benefits are not related to full change between AWO 2017 and AWO 2018; instead, they relate to the changes in wage rates taking account of forthcoming increases in NMW and NLW from April 2018.

This sum can be expected to have further indirect impacts in terms of localised spending power, with a greater concentration within rural areas with a higher proportion of agricultural workers although this also depends on patterns of expenditure that would have taken place from farm businesses (given the transfers).

2: Impact on poverty including in-work poverty

By raising the earnings floor, minimum wages might be expected to raise household income, all else being equal, with some potential impact on in-work poverty, although this could be offset by a reduction in hours worked/employment and, where relevant, could be dampened by the effects of the tax and benefits system whereby workers would pay more tax on increased pay and/or receive reduced benefits. The effect also depends on business and individual labour decisions.

Impact will vary depending on the proportion of the population in component wage jobs. The raising of minimum wage levels will have had some impact on in-work poverty by supporting the wages of the lowest paid workers. Although evidence is not available on the effects of multiple wage floors compared to single wage floors, the use of multiple minimal wage structure may accentuate impact on in work poverty, given that more workers will be affected than would be the case for a single wage floor. Putting this into the context of agricultural workers in Wales, of the 13,621 waged workers in agriculture within Wales in 2016, 3,783 (28%) were full time. The remaining 72% were part-time, seasonal or casual. The probability of in-work poverty is generally higher for part-time, seasonal or casual workers than full-time workers. This relates to around 10,000 farm workers on part-time or seasonal basis.

The most significant increase in the minimum wage rate is for Grade 2 workers (increased by 6% from previous year). This could positively impact some 1,475 people on full time basis, 2,308 on part-time basis and 3,766 casual workers (see Table 10) in Appendix A, which represents 39% of the total workforce. For other grades, there is 4-5% increase in wage rates and would also benefit farmer workers in relevant grades.

However, total impact on overall in-work poverty, and on rural poverty in general, will be limited due to the small number of people involved and the more uncertain impact on household poverty.

3: Impact on training and skills

It is anticipated that AWO 2018 will continue to enabling upskilling and a clearer career structure within the agricultural sector. It will contribute to developing and retaining skills across the entire agricultural sector.

Overall, the increase to agricultural minimum wage levels in Wales offers the opportunity to incentivise skills acquisition within the agricultural sector, potentially increasing the number of people receiving all types of training within the sector, and potentially enhancing the supply of skilled labour. As the minimum wage rates set out in AWO 2018 are generally higher than NMW/NLW and it maintains a privilege rate not universally enjoyed by other sectors than agriculture, this should help to retain the employment and skills within the agricultural industry. The upskilling impact is more related to the pay structure, which will be maintained under AWO 2018. However, as the wage rate for Y2 Apprentice (aged 25+) is set at £8.05 which is higher than that (£7.83) for Grade 1 workers (aged 25+), this may discourage upskilling to Grade 1 but should not affect people of upskilling to higher Grades from Apprenticeship. The potential increase in labour cost may to some extent negatively affect the provision of upskilling by employers.

1.6 Sector impacts

1. Impact on local government

No evidence of significant differential impact.

2. Impact on voluntary sector

No evidence of significant differential impact.

3. Impact on small businesses

The increase in costs associated with pay and other amended terms and conditions will affect farm businesses, including small businesses in the sector. The minimum agricultural wage rates had been updated annually by AWB until 2013. Grade 1 workers' pay rates were adjusted between 2013 and 2015 in line with NMW/NLW. The pay rates were further raised in the AWO 2016 and AWO 2017. It is important to acknowledge though that these rates only set statutory minimum wage levels and that employers may pay higher wages to workers to reflect their skills and the level of responsibilities taken on farm.

According to the Office for National Statistics (see Table 5), there are 14,490 agricultural, forestry and fishing businesses in Wales and 22% are employer businesses. The figures for England were 102,905 and 39%. This suggests

that agriculture in Wales is dominated by small businesses (18% being businesses that employ less than five employees) and the majority of businesses do not employ labour (78%). For smaller business with paid labour, the increases in labour costs as a result of increases in AMW may have a negative impact on business profitability.

ADAS carried out a study on the use of AWO for Welsh Government in early 2016 which involves a survey of 176 farm businesses that employed labour across different farm size and type. The study suggested that the average labour cost (for paid labour) was around 18% of the total inputs but no statistically significant differences were found between different farm sizes. This suggests that in terms of the cost structure (% of paid labour cost within total costs), it is similar across all farm sizes and there is no indication that smaller businesses would be affected disproportionately due to increases in the cost of paid labour.

Table 5: Number of agricultural businesses by size band in England and Wales (2016)

Agriculture, Forestry and Fishing	England		Wales	
	No. of businesses	%	No. of businesses	%
All businesses	102,905	100.0	14,490	100.0
All employers	40,210	39.1	3,170	21.9
With no employees (unregistered)*	4,540	4.4	670	4.6
With no employees (registered)*	58,155	56.5	10,650	73.5
1	13,840	13.4	1,350	9.3
2-4	17,855	17.4	1,325	9.1
5-9	5,425	5.3	360	2.5
10-19	1,910	1.9	110	0.8
20-49	820	0.8	20	0.1
50-99	215	0.2	5	0.0
100-199	85	0.1	0	0.0
200-249	20	0.0	0	0.0
250-499	25	0.0	0	0.0
500 or more	15	0.0	0	0.0

Source: ONS (2016) Business population estimates for the UK and regions 2016, Table 20 and Table 21.

Note: * Businesses with no employees can either be 'registered' for VAT or PAYE or are 'unregistered'.

The majority of farms in Wales are small businesses and the policy has been developed to within this context. As a result, the impact of Option 2 is not expected to impose any additional or disproportionate impact on small businesses. The larger farms, dairy farms and horticultural businesses tend to use more paid labour than the smaller businesses or other farm types. These farms may face more pressure from labour cost increases.

4. Impact by sector

The impact on different sectors may vary depending on the composition of cost base of the farm businesses. The Farm Business Survey data for Wales (2016-2017) suggests that the costs for casual and regular labour accounted for 4-6% of their agricultural cost base (see Table 6).

Table 6 : Labour cost as a percent of total input for farm businesses in Wales by sector (2016-2017)

Farm type	Labour cost (£), casual and regular labour	Agricultural cost (£)	Share of labour cost
LFA Cattle and Sheep Farms	3,500	81,700	4%
Lowland Cattle and Sheep Farms	4,100	77,900	5%
Dairy	17,000	271,100	6%
All Farm Types	5,800	112,200	5%

Source: Calculated from Farm Business Survey (FBS) data for Wales (2016/2017)

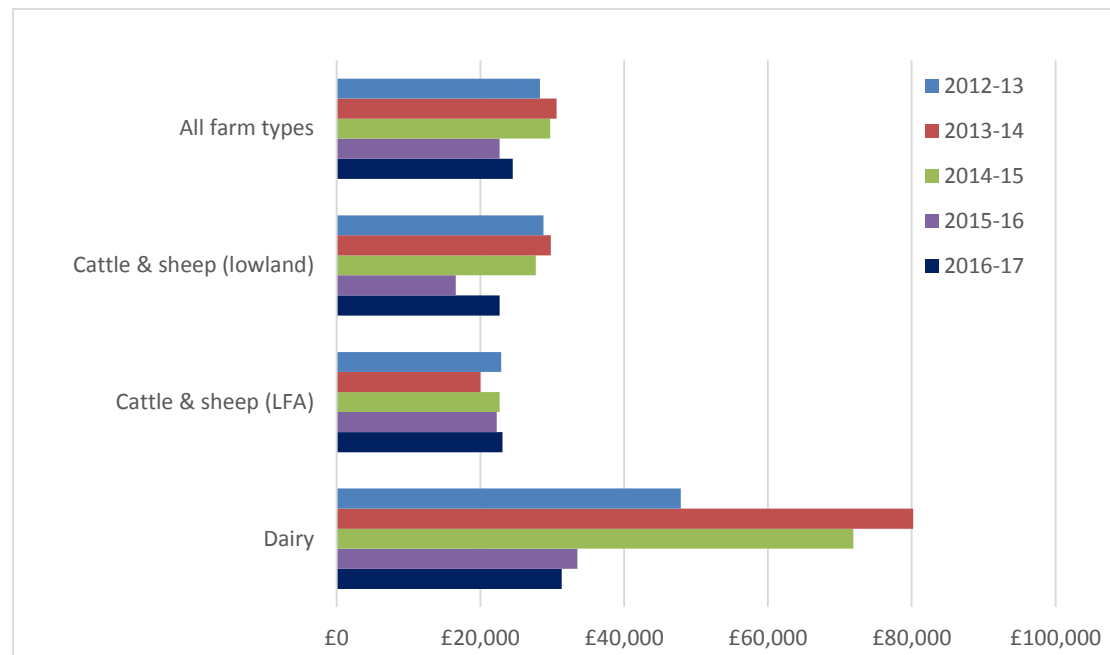
There is limited evidence as to labour productivity on farms in Wales. The scope available to each farm to exploit productivity improvements will depend to a large extent on issues such as technology adoption, characteristics of the farm and farmer and any scope for economies of scale. Overall, there is insufficient evidence to assess the likely outcomes in terms of productivity improvements.

In relation to profitability, there is variation between farms in Wales. Information on farm business income for 2016-17 suggests that there is variation across the major farm types. For dairy farms, the average farm business income was around £31,000 and cattle and sheep farms in the Less Favoured Area (LFA) around 23,000¹⁵.

Time series of farm business income data (see Figure 1) suggests that business profitability across the main farm types stays at a low level and that there is also variation between years and between farm types. For example, the farm business income for the dairy sector has declined dramatically in recent years and income for LFA cattle and sheep farms have been relatively stable but at low levels.

¹⁵ Source: Welsh Government 2017. Statistics on Farm Incomes. Available at: <http://gov.wales/statistics-and-research/farm-incomes/?lang=en>. For lowland cattle and sheep farms, there was a significant increase (+40% from the previous year) in farm business income in the year 2016-17 e.

Figure 1: Farm Business Income (in 2016/17 real prices) in Recent Years (2012/13-2016/17) by Farm Type



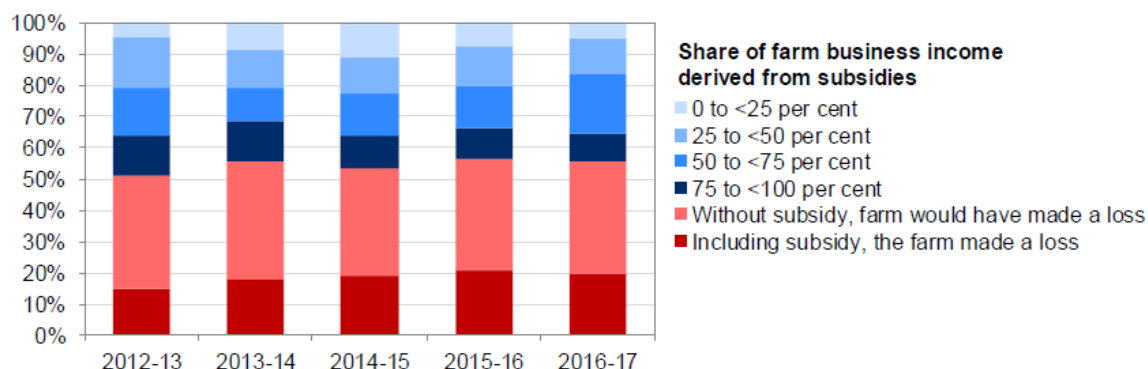
Source: Based on Statistics on Farm Incomes (2017).

It should be noted however, the profitability data of farm businesses should be interpreted in the context that the industry is currently heavily relying on public subsidies. According to the Farm Business Survey, over 50% of all farms either made a loss or would have done so without subsidy in year 2016-17 (see Figure 2). The level of dependence varies between farm types. In 2016-17, around 62% of cattle & sheep (LFA) farms either made a loss or would have done so without subsidy, compared with around 41% cattle & sheep (lowland) farms and around 44% of dairy farms. Subsidy was a small component of farm business income (less than 25%) on 3% of cattle & sheep (LFA) farms, compared with 26% of dairy farms.¹⁶

As a wider context, this dependence on subsidy can leave farms vulnerable to policy changes especially after Brexit. Increases in labour cost would add more pressure to farm business profitability particularly for those farms that are making a loss with and without subsidies.

Figure 2: Variation in subsidies* as a share of farm business income in Wales

¹⁶ Source: Farm Business Survey Quoted in Statistics Release on Farm Incomes in Wales 2016-2017. Available at: <http://gov.wales/statistics-and-research/farm-incomes/?lang=en>



Source: Farm Business Survey Quoted in Statistics Release on Farm Incomes in Wales 2016-2017.

Note *: subsidies include agri-environment payments and single farm payments.

In general terms, increases to the agricultural cost base will impact on farm income and profitability, but the extent of this cannot be accurately forecast. However, it is reasonable to assume that the greater increase in cost base associated with AWO 2018 when compared to baseline will have more pronounced impacts.

4.8 Consultation

The Panel met to decide whether to propose changes to the 2017 wages order on 9 September. A targeted consultation on their proposals was conducted 28 September – 3 November 2017. The proposals were directly emailed to an extensive list of people and organisations and was made available on the Panel's web platform. Copies may be requested by contacting the mailbox SLMenquiries@gov.wales or sending a request in writing to Agricultural Wages, Welsh Government Office, Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion SY23 3UR.

Key stakeholders, including the farming unions, UNITE, agricultural colleges and bodies such as the Association of Labour Providers were included. Panel members were encouraged to share the proposals throughout their networks. The Panel met to discuss the responses to the consultation 19 November and decided to submit their proposals to Welsh Government.

4 responses were received. There was overall support for the proposals but significant discontent from the NFU on the proposed rate rises which they maintained would be difficult to afford for the industry.

4.9 Competition Assessment

See Appendix C.

4.10 Conclusion

Potential costs and benefits for both policy options are considered and compared. However, significant limitations exist across data and

methodology. Specifically, disaggregated up to date data for Wales are not always available and few methodologies exist to demonstrate the relationship between employment, business performance of the agricultural sector and minimum wages. As a result, some impacts cannot be quantified with any degree of accuracy. The quantification was focused on the impact on wage costs/earnings for Grade 1-6 agricultural workers where disaggregated data are most available. However, the distribution by grade of workers was based on Defra study in 2012 which was not Wales specific data. The impact on other categories of workers or the impact of changes in other allowances generally affect very small groups of workers and the impacts are expected to be minimal. Due to lack of detailed data on these groups, the impacts of changes related to them were not estimated. However, the administrative costs to the farmers are estimated for their time to familiarise themselves with and make adjustments in accordance to AWO 2107. It should also be noted that the two policy scenarios are not the full difference between AWO 2017 and 2018; the differences in labour minimum wage rates also take account of the forthcoming changes in NMW and NLW from April 2018.

In terms of the relative increases within the pay structure, the wage rate for Grade 1 workers (aged 25 and above) is set at the NLW level from April 2018. This increase represents a 4% increase from the AWO 1017 rate. The biggest increase is for Grade 2 workers (6% increase from previous year) and there is a 4%-5% increase for all other grades except for Y2 Apprentice (aged 25 and above). It should be noted that the increase in wage rate for Y2 Apprentice (aged 25+) is 7% from the previous year and the absolute rate level (£8.05) is higher than Grade 1 workers (aged 25+).

Potential costs that are additional for Option 2 are summarised as follows:

1. *Employment*: The proposed increases may lead to some less than 20 fewer agricultural jobs in Wales. Reductions in hours worked may take place, but cannot be quantified.
2. *Earnings*: The total transfer could be raised by some £5.5 million per annum. This is the estimate for additional earnings under AWO 2018 also taking account of changes in NMW/NLW from April 2018.
3. *Prices, productivity and profitability*: All else given, this is likely to put downward pressure on farm business profits, but with an unclear effect on productivity. Output price rises enabling margins to be maintained seem unlikely given that the farm businesses are generally price-takers and there is limited pricing power of farm businesses. In terms changes in agricultural outputs, they are more directly affected by broader agricultural market conditions.
4. *Government enforcement*: It is likely that administrative costs accruing to the Welsh Government would be broadly similar under both options as the Welsh Government is already enforcing the AWO regime that has been preserved under the 2014 Act assuming no changes in the volume of case work to investigate each year.

Potential benefits that are additional to Option 2 include:

1. *Earnings*: The proposed minimum wage rate changes are estimated to transfer some £5.5 million per annum to agricultural workers (from employers) (excluding the effects of non-wage labour costs) in terms of their total gross income, with potential impacts throughout the wages distribution associated with the differential minimum wage rates for the different grades.
2. *In-work poverty*: Option 2 would be expected to reduce in-work poverty to some extent (to the extent that the higher hourly wage rates are not offset by reduced hours/employment), with a geographic focus on areas with a higher concentration of agricultural employment. However, this effect varies across businesses and individual labours depending on individual circumstances and decisions.
3. *Training and skills*: Uprating minimum wages throughout the grade structure and for all categories of workers, including apprentices, will provide greater incentives for workers to acquire skills and progress through the grade system. Compared to other industries, as the AWO 2018 minimum wage rates are generally higher than NMW and NLW, it maintains a privilege rate that is not universally enjoyed by other sectors than agriculture. This should help to retain the employment and skills within the agricultural industry. Option 2 would increase wages for all grades in line with previous arrangements under the AWO 2017. It is reasonable to conclude that Option 2 could be more likely to support upskilling within the sector, as well as potentially having a positive impact on efficiency. However, this upskilling benefit is more related to the grade structure itself rather than the pay rates and also depends on the ability of the businesses to pay for further training after the increase in labour costs.

In conclusion, Option 2 provides an established and previously accepted approach to the setting of minimum wages and other aspects of the employment relationship. With wage rates increasing and linked to NMW (for Grade 1 and 2 workers), the AWO 2017 will benefit the waged workforce in terms of increasing earnings and supporting further upskilling within the industry. However, this upskilling benefit is more related to the grade structure itself rather than the pay rates and may be offset to some extent by the pressure from increases in labour costs for farm businesses.

APPENDIX A: Supporting Calculations for Cost and Benefit Estimates

1. Employment Data

Table 7: Persons engaged in work on agricultural holdings, Wales (2016)

Type of Labour	Number of people
Total farmers, partners, directors and spouses: (a)	
Full-time	18,564
Part-time (b)	21,339
Total	39,903
Farm workers:	
Regular full-time (c)	3,783
Regular part-time (b) (c)	3,664
Seasonal or casual workers	6,174
Total farm workers	13,621
Total labour force	53,524

Source: Welsh Government, Welsh Agricultural Statistics, 2016 [online]

<http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>

Note:

(a) Figures are for main and minor holdings.

(b) Part-time defined as less than 39 hours per week.

(c) Includes salaried managers.

2. Earnings

Table 8: Persons engaged in work on agricultural holdings, Wales (2016)

Type of labour	No. of people	% composition
Full-time		
Regular full-time farm workers*	3,783	28%
Part-time		
Regular part-time farm workers	3,664	27%
Casual		
Seasonal or casual workers	6,174	45%
Total waged labour force	13,621	100%

Note: * including salaried managers

Source: Figures for farm workers by type are from Welsh Government, Welsh Agricultural Statistics, 2016 [online] <http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>.

Percentages are Authors' calculations based on no. of workers in each category.

Table 9: Profile of workers at each AWO grade (average %), UK (2007-2010)

Grade	Full-time	Part-time (a)	Casual
Grade 1	6%	14%	39%
Grade 2	39%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

Source: Defra Farm Labour and Wage Statistics, 2012. [online]
<http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf> , Table 12 on p.13.

Note: (a) Totals do not sum to 100% due to rounding.

Table 10 combines data from Table 8 and Table 9 to provide rough estimates of the number of full time, part-time and casual staff within each grade in Wales using employment data for year 2016.

Table 10: Number of workers at each AWO grade, estimated for Wales 2016(a)

Grade	Full-time	Part-time	Casual
Grade 1	278	513	2,408
Grade 2	1,809	2,308	3,766
Grade 3	417	256	
Grade 4	1,391	403	
Grade 5	510	110	
Grade 6	232	37	
Total	3,783	3,627	6,174

Note: (a) Totals do not add up to 16,700 due to rounding in Table 9.

Table 11 provides Defra's estimates of the average hours worked by full time, part-time and casual staff.

Table 11: Hours worked by worker type per week, UK, 2003 to 2010 average

Worker type	Total hours worked	Basic hours	Overtime hours
full time	45.7	39	6.7
part time (a)	21.3	21.3	0
Casual	29.4	26.5	2.9

Source: Defra Farm Labour and Wage Statistics, 2012. [online]
<http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf> , Table 10 on p.12.

Note: (a) Assumed that part-time workers do not work overtime.

Table 13 summarises the number of weeks that each type of workers worked per year.

Table 12: Number of weeks worked per year by different type of employment

Worker type	No. of weeks worked at Basic hours	No. of weeks worked at overtime hours
full time	52	47.6
part time (a)	52	49.2
Casual	10	10

Source: Defra Farm Labour and Wage Statistics, 2012. [online] <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf>, Table 39 on p.36.

Table 13 provides the agricultural minimum wages set in the AWO 2017 and 2018 for the agricultural industry and the increases in wage rates by grade for both basic and overtime pay.

Table 13: AWO hourly pay rates, 2017 and 2018

Grade or category of worker	Basic pay 2017	Basic pay 2018	Basic pay increase	Overtime pay increase*
Grade 1 work (aged 25+)	£7.83**	£7.83	£0.00	£0.00
Grade 2 worker	£7.83**	£8.29	£0.46	£0.69
Grade 3 worker	£8.22	£8.54	£0.32	£0.48
Grade 4 worker	£8.82	£9.16	£0.34	£0.51
Grade 5 worker	£9.34	£9.70	£0.36	£0.54
Grade 6 worker	£10.09	£10.48	£0.39	£0.59

Source: UK Government, Agricultural Workers' Rights [online] <https://www.gov.uk/agricultural-workers-rights/pay-and-overtime>

Note: * Overtime pay levels are set at 1.5 times of basic rates.

** The rates set at NLW levels from April 2018.

Table 14 combines data in Table 8, Table 10-Table 13 to provide a rough estimate of the additional labour costs per year for Option 2 relative to Option 1 in Wales across all grades for full time, part time and casual workers. The calculations for the additional wages costs were based on the number of workers in each grade by type (full time, part time and casual) multiplied by the increase per hour for the respective grades, the number of hours worked per week and the number of weeks worked per year.

Table 14: Additional labour costs per year for Option 2.

Grade	Full-time (£)		Part-time (£)		Casual (£)		Total (£)
	Basic	Overtime	Basic	Overtime	Basic	Overtime	
1	£0	£0	£0	£0	£0	£0	£0
2	£1,376,343	£324,662	£1,176,080	£0	£459,092	£75,360	£3,411,538
3	£220,951	£52,120	£90,905	£0	£0	£0	£363,976
4	£782,536	£184,591	£151,778	£0	£0	£0	£1,118,905
5	£303,808	£71,665	£43,829	£0	£0	£0	£419,302
6	£149,603	£35,289	£15,827	£0	£0	£0	£200,719
Total (£)	£2,833,242	£668,326	£1,478,419	£0	£459,092	£75,360	£5,514,440

APPENDIX B: Calculations of Employment Effect

Wage elasticity of supply is the grade of influence on the supply of labour caused by a change of wages.

The formula for wage elasticity is: Wage elasticity = change of supply of labour in percentage / change of wage in percentage.

Therefore:

- Change of supply of labour in percentage = wage elasticity * change of wage in percentage;
- Absolute change in labour supply = number of workers * change of supply of labour in percentage (i.e. wage elasticity * change of wage in percentage)

Table 15: Change in labour supply assuming wage elasticity=-0.19

	No. of workers (a)	Wage elasticity (b)	Change of wage in % (c)	Absolute changes in no, of workers (d) (d=a*b*c)
Grade 1 workers	3,148	-0.19	4.00%	-24
Grade 2 workers	7,550	-0.19	6.00%	-86
Grade 3-6 workers	2,923	-0.19	4.00%	-22
Total	-	-	-	-132

Table 16: Change in labour supply assuming wage elasticity=-0.03

	No. of workers (a)	Wage elasticity (b)	Change of wage in % (c)	Absolute changes in no, of workers (d) (d=a*b*c)
Grade 1 workers	3,148	-0.03	4.00%	-4
Grade 2 workers	7,550	-0.03	6.00%	-14
Grade 3-6 workers	2,923	-0.03	4.00%	-3
Total	-	-	-	-21

APPENDIX C: The Competition Assessment

Answers to the competition filter test

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Annex 1 - The Panel's consultation letter

Agricultural Advisory Panel for Wales

Dear Consultee

The Agricultural Sector (Wales) Act 2014 established the Agricultural Advisory Panel for Wales. One of its key responsibilities is "to prepare agricultural wages orders in draft, consulting on such orders and submitting them to Ministers for approval".

As Chair of the Panel I am writing to ask for your views on the Panel's proposed changes to the terms and conditions for agricultural workers, to be included in the Agricultural Wages Order 2018. Decisions on these proposals were made at the Panel's meeting on 19 September and are listed below.

The Panel proposes that the minimum rates of pay for agricultural workers should be increased as follows:

Grade 1 under 16	£3.47
age 16-24	£7.34
Grade 1 25 +	£7.80
Grade 2	£8.29
Grade 3	£8.54
Grade 4	£9.16
Grade 5	£9.70
Grade 6	£10.48

Apprentice rates to be raised as follows

Year 1	£3.93
Year 2(16.17)	£4.21
Year 2 (18-20)	£5.82
Year 2 (21-24)	£7.35
Year 2 (25+)	£8.05

Other proposals

Dog allowance:	£8.02
Night work:	£1.52 per hour of night work
Birth and adoption grant:	£63.09 for each child

No other changes are proposed at this stage.

I should be grateful for your comments on these proposals before 3 November so that the Panel may submit our advice to Ministers as required by the Agricultural Sector (Wales) Act 2014.

Thank you in advance for your input.

Please respond to the Panel Manager (Paula Whitfield) in writing at the address below or by email to: SLMenquires@wales.gsi.gov.uk or paula.whitfield@gov.wales

Paula Whitfield
Agricultural Advisory Panel Manager
Welsh Government
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

Yours sincerely

Lionel Walford

Annex 2 - List of those consulted by the Panel on their proposal

British Pakistan Foundation
BVSNW - Black Voluntary Sector Network Wales
Diverse Cymru
CTP International
BENNW - Black Environment Network
Gofal Cymru
Race Council Cymru
Race equality first
North Wales Regional Equality Network (NWREN)
South East Wales Race Equality Council (SEWREC)

Religion

Muslim Council of Wales
The Jewish Leadership Council
Cafod
Baha'i Council in Wales
British Humanist Association
Evangelical Alliance Wales
Welsh Refugee Council
The Church in Wales
CYTUN
The inter faith council for wales

Welsh language

Merched Y Wawr
Welsh language commissioner

Youth Children's Rights

Contact The Campaign for the Children and Young People Assembly
for Wales
National Youth Agency
Plant yng nghymru - Children in Wales
UK Youth
Council for Wales voluntary Youth Services
Wales Council for Voluntary Youth Action
Youth United Foundation
Action for Children
British Youth Council
Anabledd Dysgu Cymru/Learning Disability Wales
Childrens commissioner wales
YFC Wales

Businesses

Associated British Ports
Atkins Global
BAM Nuttall Ltd
British Water
Canal and Rivers Trust

Chartered Institute of Housing
 Clee Tompkinson and Francis
 Coal Authority
 Common Vision
 Community Housing Cymru
 Community land advice
 Confederation of British Industry
 Constructing Excellence in Wales
 Crown Estate
 Denbighshire County Council
 DM Property consultats
 Dwr Cymru
 Dwr Cymru
 ehlaw
 Energy Savings Trust
 Ffos Las Racecourse
 Fjord Horse
 Freightliner
 Friends of the Earth Cymru
 Landscape Institute
 Llanishen Reservoir Action Group
 Lloyds Bank PLC
 Mid & West Wales Fire and Rescue Service
 Mineral Products Association
 MOD
 National Sewerage Association
 OFTEC
 Oil Firing Technical Association Ltd (OFTEC)
 RICS Wales
 Royal Town Planning Institute
 Scottish Government
 Seven Rivers Trust
 The Oil Specialists
 Tir Enterprises
 United Utilities
 University of Bangor
 Welsh Local Government Association
 Coleg Sir Gar
 Coleg Cambria
 Edward Perkins Chartered Surveyors
 IOSH (Institute of Occupational Safety and health)
 TCS Management
 Country land and business association

Disabilities

Disability Wales
 Action on hearing Loss

All Wales People First
 Cardiff & Vale Coalition of Disabled People
 British Deaf Association Wales
 Leonard Cheshire Trust
 British Dyslexia Association
 Disability Advice Project (Torfaen)
 Communication Matters
 Disability Powys
 DiverseCymru
 Employers Forum on Disability
 Equality and Human Rights Commission
 Eplisepsy Wales
 Learning Disability Wales
 Mind Cymru
 North Wales Deaf Association
 Wales Council for Deaf People
 Swansea disability forum
 Scope
 Disability Arts Cymru
 Gofal Cymru
 Mencap Cymru
 National Deaf Childrens Society Wales
 North Wales Deaf Association
 RNIB
 Wales council for the Blind

Gender/sexuality

LGBT Consortium
 A:Gender
 Unique Transgender network
 Stonewall Cymru
 Unity Group Wales

Women

Career Women Wales
 Chwarae Teg
 UNIFEM in Wales
 BAWSO
 Mewn Cymru
 Wales resource centre for women in science, engineering and technology
 Welsh assembly of women
 Welsh womens aid
 Women connect first
 Women on Boards
 Cymorth I Ferched Cymru Welsh Womens Aid
 Women in Wales
 WEN Wales

North Wales Womens Network
Womens Food and Farming Union
Wales Women in Agriculture Forum (through Menter a Busnes)
Women in property
Womens engineering society
WiRE (Women in rural enterprise)

Elderley

Age cymru
Older Peoples commissioner for wales
Age concern cardiff

Poverty

Joseph Rowntree Foundation
Bevan Foundation
National Energy Action Wales

General

Workplace Report Magazine
Oxfam Cymru
Participation cymru
WRAP Wellness Recovery Action Plan
Equality and Human Rights Commission
British Red Cross South Wales
BTCV - British Trust for Conservation Volunteers
Carers Wales / Cynhalwyr Cymru
CATCH-UP - Co-operative Action to Change & Hurry Up Progress
CCF - Cardiff Communities First
MENFA - Mentoring for All
LDW - Learning Disability Wales
Journey - Depression Alliance Cymru
Duffryn Community Link
SOVA - Supporting Others Through Volunteering Action

Agriculture

Defra
Dept for BIS
Devons Cattle Society
Dyfi Biosphere
Elan Valley Trust
Environment Agency
Eryri National Park
Farming and Countryside Education
Forest Research
Forestry Commission Wales
Future Farmers
FUW
FUW
FWAG

Horticulture Wales
HSBC Agriculture
Hybu Cig Cymru/Meat Promotion Wales
IBERS
IBERS
Institute of Chartered Foresters
Landex (Land Based Colleges Aspiring to Excellence)
Lantra
Llais Y Goedwig
Maelor Forest Nurseries Ltd
Menter a Busnes
Menter Mon
National Beef Association
Natural Resources Wales
National Trust
NFU Cymru
NFU
NFU Mutual Senior Agent
NPTC College Group
OCW
Pembrokeshire Coast
Pembrokeshire NPA
PINS
Powys County Council
RHSMR Mottershead
RSPB
RWAS
Santander
Sustainable Farming Consultant
TFA
Unite Union
Visit Wales
Wales Environment Link
Wales Wildlife and Countryside Trust
Water Regulations Advisory Service
Wales Rural Observatory
Wales Tourism Alliance
Watts and Morgan
Welsh Black Cattle Society
Welsh Lamb and Beef Promotions
West wales European Centre
Wildfowl and Wetlands Trust
Wildlife Trusts Wales
WLGA
WWF Cymru
Wye and Usk Foundation

Whittingham Riddell
Lusitanos
Farmers Welsh lavender Ltd
Aberdeen Angus Cattle Society
ADAS
Agricultural Business
APHA
Archaelogical Trust
Association of National Parks
Brecknock Wildlife Trust
Brecon Beacons National Park
British Blonde Society
British Blue cattle Society
British Limousin Cattle Society
British Simmental Cattle Society
British Veteran Association
Brown Swiss cattle society
BWW Management Planner Forum
CAAV
CADW
Campaign for the Protection of Rural Wales
Carmarthen Bay and Estuaries
Carmarthen Rivers Trust
CBI
CCFG (Continious Cover Forestry Group)
Celtic Ecology
Centre for Alternative Technology
CLA
Coastal Zone and Marine Environment Research Unit
Country Land and Business Association
Cynnal Cymru
DARDNI
Dartmoor Society
Dairy Co
Dairy Development Centre (DDC)
Dairy Strategy group
DEFRA
Dept for BIS
Devons Cattle Society
Dyfi Biosphere
Elan Valley Trust
Environment Agency
Eryri National Park
Farming and Countryside Education
Forest Research
Forestry Commission Wales

Future farmers
FUW
FWAG
Horticulture Wales
HSBC Agriculture
Hybu Cig Cymru/Meat Promotion Wales
IBERS
Institute of chartered foresters
Landex (Land based colleges aspiring to excellence)
Lantra
Llais Y Goedwig
Maelor Forest Nurseries Ltd
Mentor a busnes
Menter Mon
National beef Association
Natural Resources Wales
National Trust
NFU Cymru
NFU Mutual Senior Agent
NPTC College Group
OCW
Pembrokeshire Coast
Pembrokeshire NPA
PINS
Powys County Council
Public health Wales
RHSMR Mottershead
RSPB
RWAS
Santander
Sustainable Farming Consultant
TFA
UNITE
Visit Wales
Wales Environment Link
Wales Wildlife and Countryside Trust
Water Regulations Advisory Scheme
Wales Rural Observatory
Wales Tourism Alliance
Watts and Morgan
Welsh black Cattle society
Welsh lamb and Beef Promotions
West Wales European centre
Wildfowl and Wetlands Trust
Wildlife Trust Wales
WLGA

WWF Cymru
Wye and Usk Foundation
Whittingham Riddell
Lusitanos
Focus on Labour Exploitation (FLEX)
Recruitment and Employment Confederation (REC)
The Association of Professional Staffing Companies (APSCo)
The Freelancer and Contractor Services Association (FCSA)
Resolution Foundation (RF)
Centre for Social Justice (CSJ)
UNISON
Association of Labour Providers (ALP)
Confederation of Business Industry (CBI)
British Retail Consortium (BRC)
Joseph Rowntree Foundation (JRF)
Federation of Small Businesses (FSB)
Trades Union Congress (TUC)



Ein cyf/Our ref MA-L-LG-0121-18

Elin Jones AM
Presiding Officer
National Assembly for Wales

29 March 2018

Dear Elin,

The Agricultural Wages (Wales) Order 2018

In accordance with guidance I am notifying you that in accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, I am notifying you that the 21 day rule will be breached for the introduction of the Agricultural Wages (Wales) Order 2018.. The Explanatory Memorandum is attached for your information.

Background

The Agricultural Advisory Panel for Wales (the Panel) was established under the Agricultural Sector (Wales) Act 2014 on 1 April 2016. The Panel's remit includes reviewing wages and other employment conditions and supporting skills and career development in the agricultural sector.

At present, agricultural workers in Wales are subject to the rates specified by the Agricultural Wages (Wales) Order 2017.

The Panel decided recommend an increase to wages for agricultural workers and consulted on the proposals in the autumn of 2017. The Panel's original timeline proposed to have the new Order in force on 1 April, the same date the UK National Living Wage (NLW) and National Minimum Wage (NMW) increases take effect. New wage rates for agricultural workers in Scotland and Northern Ireland come into force on this day as well. The Panel's aim is to align the agricultural minimum wage increase with NLW and NMW changes.

Bae Caerdydd • Cardiff Bay
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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Jane.Hutt@llyw.cymru
Correspondence.Jane.Hutt@gov.wales

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.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Higher than expected uplifts to the rates of the National Minimum/Living Wage were announced in late November. This necessitated a review of the agricultural minimum rates proposed to be included in the Agricultural Wages (Wales) Act 2018. Though every effort has been made to act quickly no compromise in consideration has been allowed.

Until the Agricultural Wages (Wales) Order 2018 comes into force, agricultural workers in Wales will not receive the proposed uplift to the agricultural minimum rates or the proposed rises to certain allowances.

To minimise disruption, and ensure workers are paid in accordance with the rates proposed by the Agricultural Advisory Panel, it is proposed the Statutory Instrument will breach the 21 day rule.

Breaching the 21 day rule will minimise the delay in bringing the new agreed wage rates into force and provide fair employment conditions and fair pay to agricultural workers in Wales. A breach of the 21 day rule is thought necessary and justifiable in this case on the basis it will reduce the delay in bringing in the uplift to the minimum agricultural wage rates and certain allowances into force.

Any delay would penalise those agricultural workers who would be paid lower rates of pay than they would have anticipated receiving from 1 April 2018.

An Explanatory Memorandum has been prepared and this has been laid, together with the Order, in Table Office.

A copy of this letter goes to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Chris Warner, Head of Policy and Legislation Committee Service.

Yours sincerely,



Julie James AC/AM

Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

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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.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

SL(5)208 – The Agricultural Wages (Wales) Order 2018

Background and Purpose

The Agricultural Wages (Wales) Order 2018 ("the 2018 Order") makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The 2018 Order revokes and replaces the Agricultural Wages (Wales) Order 2017 ("the 2017 Order") with changes which increase the 2017 pay levels for agricultural workers.

Procedure

Negative.

Technical Scrutiny

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

1. Standing Order 21.2(v) – the meaning of the instrument needs further explanation.

In brief, article 15(1) says that, where an employer provides an agricultural worker with a house, the employer may deduct £1.50 an hour from the agricultural worker's minimum wage.

In brief, article 15(2) says that, where an employer provides an agricultural worker with "other accommodation", the employer may deduct £4.82 an hour from the agricultural worker's minimum wage.

A deduction of £4.82 an hour appears to be a very large deduction given the hourly rates that apply to agricultural workers. We would therefore appreciate: (1) confirmation whether our understanding of articles 15(1) and 15(2) is correct, and (2) further information around the provision of "other accommodation" and the deduction allowed under article 15(2).

2. Standing Order 21.2(vii) – there appears to be inconsistency between the meaning of the English and Welsh texts.

Article 43(2) in the Welsh makes transitional arrangements for "an agricultural worker employed as a worker at a Grade or as an apprentice but not as a flexible worker".

Article 43(2) in the English makes transitional arrangements for "an agricultural worker employed as a worker at a Grade or as an apprentice". In the English, therefore, there is no mention of flexible workers.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

We would welcome clarification as to why this 2018 Order was not made until 27 March 2018 and not laid until after 4pm on 29 March 2018 (Maundy Thursday), particularly given its coming into force date of 1 April 2018 (Easter Sunday).



We note that consultation took place in autumn 2017, and that changes in the rates of national minimum and living wages were made in late November 2017 which resulted in a review. We would welcome clarification as to why the review took over 4 months to be reflected in a final 2018 Order.

We would also welcome an explanation as to why we were not formally notified in advance of the problems with this Order given that the breach of the 21-day rule occurred on 9 March 2018.

As well as for issues of timing and communication, we also feel the need to raise this concern because last year's order (i.e. the 2017 Order) also breached the 21-day rule, when it was made on 2 November 2017 and came into force on 3 November 2017.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

12 April 2018



Agenda Item 4.1

Rt Hon Carwyn Jones AM
First Minister

17 April 2018

Dear First Minister

Scrutiny of regulations made under the European Union (Withdrawal) Bill

I am writing in relation to the Constitutional and Legislative Affairs Committee's recent report ("the report") on the **Scrutiny of regulations made under the European Union (Withdrawal) Bill** ("the Bill").

In particular, I would like to raise with you matters relating to your letter to the Secretary of State dated 5 February, the plenary debate on the report held on 7 March, the formal response to the report from the Leader of the House and Chief Whip dated 27 March, and your 29 March letter to the Secretary of State for Wales that relates both to the report on the Bill and its sifting committee provisions.

You will be aware that our inquiry and subsequent report considered the appropriateness of the scope and nature of delegated powers provided in the Bill to UK and Welsh Ministers, and the procedures to be used to scrutinise that delegated legislation. Given the Bill's passage through the House of Lords, the report focused on amendments we believed should be made to the Bill, and addressed questions which were raised by the Secretary of State in a letter to the Llywydd on 16 January.

Our report made seven recommendations, four of which recommended amendments to the Bill. For that reason, we believed it appropriate to seek the National Assembly's views on those recommendations, and the motion asking the National Assembly to note the committee report also requested that it endorse recommendations 1, 2, 4 and 7.



On 7 March, the motion was agreed without objection and the National Assembly offered unanimous support for those recommendations. Consequently, on 22 March, the Llywydd wrote to the Secretary of State for Wales drawing his attention to those recommendations and asking that he receive the letter as formal notification of the National Assembly for Wales's position on what amendments should be made to the Bill in respect of procedures for the scrutiny of subordinate legislation made under its provisions.

In light of the events and correspondence I refer to above, I would like to seek clarification from you on the reasons for the approach the Welsh Government has adopted. In particular I would be grateful if you could explain why, having advised in your letter to the Secretary of State of 5 February that matters relating to the sifting committee were for the National Assembly to determine, you subsequently wrote to the Secretary of State for Wales on 29 March rejecting a recommendation endorsed by the National Assembly about the operation of that sifting committee. That endorsement by the National Assembly was unanimous and included support from the Welsh Government.

I recognise that during the plenary debate the Leader of the House told the National Assembly that the Welsh Government was reserving its position on recommendation 2 pending thorough consideration. However, the Leader of the House had not sought to amend the motion to reflect that position, which, as previously stated, was then unanimously endorsed.

Without prejudicing the will of any Government, the National Assembly for Wales should not find itself in a position where it expresses a formal, all party position which is then subsequently, and very soon after, called into question within correspondence of which the Assembly is not aware. As I am sure you will appreciate, as a committee, we are concerned generally at the transfer of power from legislatures to executives. The approach the Welsh Government has adopted on these matters undermines the prerogative of the legislature.

I look forward to hearing from you at the earliest opportunity. I am writing to the Llywydd separately on this matter.



This letter is copied to Julie James AM, Leader of the House and Chief Whip.

Yours sincerely,

A handwritten signature in black ink, reading 'Mick Antoniw'. The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Elin Jones AM
Llywydd

17 April 2018

Annwyl Lywydd

Scrutiny of regulations made under the European Union (Withdrawal) Bill

I enclose a copy of a letter I have today sent to the First Minister regarding the National Assembly's decision on 7 March to endorse recommendations 1, 2, 4 and 7 in the Constitutional and Legislative Affairs Committee's recent report ("the report") on the Scrutiny of regulations made under the European Union (Withdrawal) Bill ("the Bill"). You wrote to the Secretary of State on 22 March notifying him of the Assembly's decision.

Our concerns have arisen as a result of the First Minister's letters to the Secretary of State dated 5 February and 29 March, as well as the formal response to the report from the Leader of the House and Chief Whip, dated 27 March. For ease of reference, the correspondence referenced can be found as annexes to this letter.

We consider that the matters outlined in the letter to the First Minister raise serious constitutional concerns, because it would appear that the prerogative of the legislature is being undermined. It is for that reason that I thought it appropriate to draw this correspondence to your attention.

Yours sincerely,



Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Rt Hon Carwyn Jones AM
First Minister

17 April 2018

Dear First Minister

Scrutiny of regulations made under the European Union (Withdrawal) Bill

I am writing in relation to the Constitutional and Legislative Affairs Committee's recent report ("the report") on the Scrutiny of regulations made under the European Union (Withdrawal) Bill ("the Bill").

In particular, I would like to raise with you matters relating to your letter to the Secretary of State dated 5 February, the plenary debate on the report held on 7 March, the formal response to the report from the Leader of the House and Chief Whip dated 27 March, and your 29 March letter to the Secretary of State for Wales that relates both to the report on the Bill and its sifting committee provisions.

You will be aware that our inquiry and subsequent report considered the appropriateness of the scope and nature of delegated powers provided in to the Bill to UK and Welsh Ministers, and the procedures to be used to scrutinise that delegated legislation. Given the Bill's passage through the House of Lords, the report focused on amendments we believed should be made to the Bill, and addressed questions which were raised by the Secretary of State in a letter to the Llywydd on 16 January.

Our report made seven recommendations, four of which recommended amendments to the Bill. For that reason, we believed it appropriate to seek the National Assembly's views on those recommendations, and the motion asking the National Assembly to note the committee report also requested that it endorse recommendations 1, 2, 4 and 7.



On 7 March, the motion was agreed without objection and the National Assembly offered unanimous support for those recommendations. Consequently, on 22 March, the Llywydd wrote to the Secretary of State for Wales drawing his attention to those recommendations and asking that he receive the letter as formal notification of the National Assembly for Wales's position on what amendments should be made to the Bill in respect of procedures for the scrutiny of subordinate legislation made under its provisions.

In light of the events and correspondence I refer to above, I would like to seek clarification from you on the reasons for the approach the Welsh Government has adopted. In particular I would be grateful if you could explain why, having advised in your letter to the Secretary of State of 5 February that matters relating to the sifting committee were for the National Assembly to determine, you subsequently wrote to the Secretary of State for Wales on 29 March rejecting a recommendation endorsed by the National Assembly about the operation of that sifting committee. That endorsement by the National Assembly was unanimous and included support from the Welsh Government.

I recognise that during the plenary debate the Leader of the House told the National Assembly that the Welsh Government was reserving its position on recommendation 2 pending thorough consideration. However, the Leader of the House had not sought to amend the motion to reflect that position, which, as previously stated, was then unanimously endorsed.

Without prejudicing the will of any Government, the National Assembly for Wales should not find itself in a position where it expresses a formal, all party position which is then subsequently, and very soon after, called into question within correspondence of which the Assembly is not aware. As I am sure you will appreciate, as a committee, we are concerned generally at the transfer of power from legislatures to executives. The approach the Welsh Government has adopted on these matters undermines the prerogative of the legislature.

I look forward to hearing from you at the earliest opportunity. I am writing to the Llywydd separately on this matter.



This letter is copied to Julie James AM, Leader of the House and Chief Whip.

Yours sincerely,

A handwritten signature in black ink, reading 'Mick Antoniw', with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/FM/0044/18

Rt Hon Alun Cairns MP
Secretary of State for Wales
Gwydyr House
London
SW1A 2NP

5th February 2018

Dear Alun

I am writing in response to your letter of 16 January, in respect of the European Union (Withdrawal) Bill.

I was very disappointed that there were no agreed amendments to Clause 11 during Commons consideration, but I note your commitment to bring forward amendments in the House of Lords. It is of course essential that these amendments are agreed with the Welsh and Scottish Governments, and I know that discussions at official level are continuing.

I also note the Government amendments to clauses 7 and 10. I welcome the replacement of the requirement for consent of UK Ministers with a requirement for consultation in relation to the powers in clause 7, although I note that the same amendment has not been made in clauses 8 and 9, and I am not clear about the reasoning for the retention of these restrictions. (I am in any event aware of the House of Lords Constitution Committee's recommendation that clause 9 be omitted from the Bill). I also welcome the amendments enabling Welsh Ministers to modify directly applicable EU law in areas of devolved competence, although I also note they are based on an assumption that Clause 11 will continue in its current form, which will not be acceptable to the Welsh Government or to the Assembly; the official level discussions must produce a better solution.

I have considered the specific questions in your letter in respect of the Committee stage amendments of the Bill. In respect of the statutory requirement to produce explanatory material alongside SIs made under the relevant powers in Schedule 2 of the Bill, the information envisaged to be included in the statements is material that we would expect to provide in any event. I therefore have no strong view as to whether such a requirement should be placed on the face of the Bill; but I am aware that the Constitution Committee has made further recommendations about the content of supportive explanatory material. If the UK Government is minded to accept these, I will need to consider the Welsh position afresh. I would be grateful to be kept informed of your developing thinking in respect of that

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recommendation, and in respect of the applicability of the requirements to SIs made under the joint procedure.

In respect of the requirement to submit negative resolution SIs to a 'sifting' committee, I consider that this is properly a matter for the National Assembly for Wales to determine, as is the applicability of this requirement to SIs made under the joint procedure.

In respect of the "made affirmative" procedure, our view is that in principle this should be available to Welsh Ministers and the Assembly, to match the flexibility available to UK Ministers.

Finally, our officials have also been discussing the correction of deficiencies in the Government of Wales Act 2006. I welcome the commitment to use Orders in Council to make correcting amendments which fall outside competence. I have considered the various means by which the small number of deficiencies which are within our competence might be corrected, and I believe the best solution in this case would be for the corrections to be made by the Withdrawal Bill. I have asked my officials to work with yours to develop the necessary amendments.

I am copying this to the Presiding Officer, the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', with a stylized, flowing script.

CARWYN JONES

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Rt Hon Alun Cairns MP
Secretary of State for Wales
Gwydyr House
London
SW1A 2NP

29th March 2018

Dear Alun

I am writing in response to your letter of 16 March 2018 about changes to the European Union (Withdrawal) Bill. I note the summary of the changes you intend to make to the Bill at Lords Report, and the progress in respect of other matters, including the correction of within competence deficiencies in the Government of Wales Act 2006, the correction to the technical standards reservation, and your proposal in respect of enhanced explanatory material.

You raise a specific question in respect of the 'sifting committee' provisions, with reference to the recommendation of the Constitutional and Legislative Affairs Committee that the provisions should apply to instruments laid before the Assembly, and that the sifting committee's recommendation on the appropriate procedure should be binding. The Welsh Government's view is that it would be appropriate for the sifting committee provisions as set out in the Bill to apply to instruments laid before the Assembly.

However, we are not persuaded that the recommendation made by the sifting committee should be binding. It is right that the exercise of delegated powers should be subject to appropriate and proportionate scrutiny and I expect that in the vast majority of cases Welsh Ministers will accept the recommendation of the sifting committee. However, there may be situations where – for reasons of urgency – Welsh Ministers will need to act more quickly than the affirmative procedure provides for, and it is essential the government retains the flexibility to do so, notwithstanding the recommendations of the sifting committee. We also believe there is a strong case for maintaining consistent arrangements between the National Assembly and the UK Parliament.

I can also confirm that we have no other proposed changes to the scrutiny arrangements for the Welsh Ministers' powers.

I am copying this letter to the Presiding Officer and to the Chair of the Assembly's Constitutional and Legislative Affairs Committee.

Yours sincerely

CARWYN JONES

Bae Caerdydd • Cardiff Bay
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Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/L/JJ/ 0198/18

Mick Antoniw AM/AC
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
CF99 1NA

27 March 2018

Dear Mick

I am writing to notify you of the Welsh Government's formal response to the Committee's recent report on the scrutiny of regulations made under the European Union (Withdrawal) Bill. I attach a table which sets out our response to each recommendation.

I am grateful to the Committee for their work on this matter.

Yours sincerely,

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

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**Welsh Government response to the Constitutional and Legislative Affairs Committee
- Scrutiny of regulations made under the European Union (Withdrawal) Bill**

Recommendation	Response
<p>Recommendation 1. We recommend that the sifting mechanism currently included in the Bill should be extended to cover all regulations that are made under the Bill and are laid before the National Assembly, and that a committee of the National Assembly is responsible for making a recommendation as to the appropriate procedure for the regulations.</p>	<p>AGREE: This is properly a matter for the Assembly to consider and agree with the UK Government and Parliament. The Welsh Government agrees that the exercise of delegated powers should be subject to appropriate and proportionate scrutiny. We also believe that, in respect of the provisions relating to the exercise and scrutiny of delegated powers, the powers and duties on Welsh Ministers should be in line with those which apply to UK Ministers. Therefore, the Welsh Government would be content for equivalent sifting requirements to apply to instruments laid before the Assembly, as to instruments laid before Parliament.</p>
<p>Recommendation 2. The recommendation made by the sifting committee under recommendation 1 should be binding, save where the National Assembly resolves otherwise. This requirement should be reflected on the face of the Bill.</p>	<p>REJECT: The Welsh Government recognises this is primarily a matter for the National Assembly to consider and agree with the UK Government and Parliament. However, we are not persuaded that the recommendation made by the sifting committee should be binding.</p> <p>We agree that the exercise of delegated powers should be subject to appropriate and proportionate scrutiny and we have demonstrated our commitment to robust scrutiny through the approach we have taken in the LDEU Bill. We also believe that in the vast majority of cases Welsh Ministers will accept the recommendation of the sifting committee that a set of regulations should be subject to the affirmative procedure rather than negative procedure.</p> <p>However, there may be situations where – for reasons of urgency – Welsh Ministers will need to act more quickly than the affirmative procedure provides for, and it is essential the government retains the flexibility to do so, notwithstanding the recommendations of the sifting committee.</p> <p>The Welsh Government also believes there is a case for maintaining consistent arrangements between the National Assembly and the UK Parliament, particularly for joint and composite instruments where both the Assembly’s and Parliament’s sifting committees would be making recommendations on the appropriate procedure.</p>

Recommendation	Response
<p>Recommendation 3. We recommend that the sifting criteria set out in paragraph 35(b) of this report are applied to all regulations that are made under the Bill and are laid before the National Assembly, and that the criteria should be set out in the Standing Orders of the National Assembly</p>	<p>REJECT: The Welsh Government recognises that the sifting committee will need to agree criteria by which it performs the sifting process. However, these criteria will need to be consistent with the final framework for the sifting mechanism, and the Assembly needs to maintain some flexibility in this regard. The Welsh Government is therefore not persuaded that the criteria should be included in Standing Orders.</p>
<p>Recommendation 4. We recommend that the Bill is amended in line with paragraphs 44 to 46 of this report, which include endorsements of recommendations made by the House of Lords Constitution Committee and the House of Lords Delegated Powers and Regulatory Reform Committee.</p> <p>The amendments proposed at paragraphs 44-46 are:</p> <ul style="list-style-type: none"> • That the affirmative procedure should apply to any measure which involves the making of policy • That the affirmative procedure should apply to regulations made under clauses 7, 8, 9 and 17 that amend or repeal primary legislation 46 • That the Government of Wales Act 2006 should be included in the list of enactments in clause 7(7) that cannot be amended by regulations 	<p>AGREE: The Welsh Government believes, in respect of the provisions relating to the exercise and scrutiny of delegated powers, that the powers and duties on Welsh Ministers should be in line with those which apply to UK Ministers. We are supportive of the EUW Bill being amended in the way proposed by CLAC (paragraphs 44-46).</p>
<p>Recommendation 5. We recommend that this Committee—the Constitutional and Legislative Affairs Committee—should be the sifting committee for the National Assembly for Wales and that the Assembly’s Standing Orders are amended accordingly.</p>	<p>AGREE IN PRINCIPLE: This is a matter for the Assembly. The Welsh Government agrees it would be appropriate for CLAC to assume this function. However, we do not believe it is necessary for Standing Orders to be amended to reflect this.</p>
<p>Recommendation 6. We recommend that the sifting mechanism should apply to regulations under Categories 1, 2 and 3 identified in this report, namely all regulations made under the Bill containing devolved provisions that are laid before the National Assembly.</p> <ul style="list-style-type: none"> • Category 1: regulations made by the Welsh Ministers acting alone using their powers under Schedule 2, laid 	<p>AGREE: The Welsh Government agrees that the sifting mechanism should apply to the categories of regulations set out by CLAC, although it notes the potential logistical challenges in respect of joint and concurrent regulations, where both the National Assembly and Parliamentary sifting committees will be considering the same set of regulations.</p>

Recommendation	Response
<p>before the National Assembly for Wales only;</p> <ul style="list-style-type: none"> • Category 2: regulations made by the Welsh Ministers and UK Ministers acting jointly under Schedule 2, laid before both the National Assembly for Wales and the UK Parliament; • Category 3: regulations made by the Welsh Ministers and UK Ministers using their concurrent powers (under Schedule 2 and clauses 7, 8 and 9, respectively) in composite regulations, laid before both the National Assembly for Wales and the UK Parliament; • Category 4: regulations made by UK Ministers acting alone using their powers under clauses 7, 8, 9 and 17, laid before the UK Parliament only. 	
<p>Recommendation 7. We recommend that the made affirmative procedure for urgent cases should also apply to regulations made by the Welsh Ministers (whether acting alone or acting with UK Ministers in composite regulations or acting with UK Ministers in joint regulations) in order for there to be consistent treatment of ministers of all governments.</p>	<p>AGREE: The Welsh Government believes that the made-affirmative procedures for urgent cases should be available in respect of regulations made by Welsh Ministers, to match the flexibility available to UK Ministers, and consistent with the principle of consistent treatment of ministers of all governments.</p>

Agenda Item 4.2

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport



Llywodraeth Cymru
Welsh Government

David Rees AM
Chair
External Affairs and Additional Legislation Committee

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee

16 April 2018

Dear *Mick,*

I am writing following my appearance before the joint meeting of the External Affairs and Additional Legislation Committee and the Constitutional and Legislative Affairs Committee on 12th February to consider the UK Trade Bill. At the committee I agreed to share meeting dates of the EU Exit Working Group with committee members. The EU Exit Working group met on the following dates:

4 October 2017
7 December 2017
24 January 2018
22 March 2018

Please note that prior to the establishment of the EU Exit Working Group Brexit was a standing item on the agenda for the Council for Economic Development. The EU Exit Working Group was then established as a sub-group of the Council for Economic Development.

Yours sincerely

Ken Skates AC/AM

Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

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