

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	Gareth Williams
Meeting date: 4 May 2020	Committee Clerk
Meeting time: 11.15	0300 200 6565
	SeneddLJC@assembly.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

Informal pre-meeting (10:45–11:15)

1 Introduction, apologies, substitutions and declarations of interest
11:15

**2 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**
11:15–11:20

Negative Resolution Instruments

2.1 SL(5)531 – The Agricultural Wages (Wales) Order 2020

(Pages 1 – 95)

CLA(5)–13–20 – Paper 1 – Report

CLA(5)–13–20 – Paper 2 – Order

CLA(5)–13–20 – Paper 3 – Explanatory Memorandum

CLA(5)–13–20 – Paper 4 – Letter from the Minister for Finance and Trefnydd
to the Llywydd, 30 March 2020

**2.2 SL(5)538 – The Town and Country Planning (General Permitted Development)
(Amendment) (No. 2) (Wales) Order 2020**

(Pages 96 – 108)



CLA(5)–13–20 – Paper 5 – Report

CLA(5)–13–20 – Paper 6 – Order

CLA(5)–13–20 – Paper 7 – Explanatory Memorandum

CLA(5)–13–20 – Paper 8 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 14 April 2020

2.3 SL(5)539 – The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020

(Pages 109 – 144)

CLA(5)–13–20 – Paper 9 – Report

CLA(5)–13–20 – Paper 10 – Regulations

CLA(5)–13–20 – Paper 11 – Explanatory Memorandum

CLA(5)–13–20 – Paper 12 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 21 April 2020

CLA(5)–13–20 – Paper 13 – Written statement

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

11:20–11:25

3.1 SL(5)534 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

(Pages 145 – 148)

CLA(5)–13–20 – Paper 14 – Report

CLA(5)–13–20 – Paper 15 – Welsh Government response

4 Paper(s) to note

11:25–11:30

4.1 Letter from the Minister for Finance and Trefnydd: Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020

(Pages 149 – 150)

CLA(5)–13–20 – Paper 16 – Letter from the Minister for Finance and Trefnydd, 28 April 2020

**4.2 Letter from the Minister for International Relations and the Welsh Language:
Ministerial Forum for Trade**

(Pages 151 – 152)

CLA(5)–13–20 – Paper 17 – Letter from the Minister for International Relations and the Welsh Language, 29 April 2020

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

11:30

6 Legislative Consent Memorandum on the Agriculture Bill – draft report

11:30–12:00

(Pages 153 – 172)

CLA(5)–13–20 – Paper 18 – Draft report

CLA(5)–13–20 – Paper 19 – Letter from the Minister for Environment, Energy and Rural Affairs, 28 April 2020

Date of the next meeting – 11 May

SL(5)531 – The Agricultural Wages (Wales) Order 2020

Background and Purpose

The Agricultural Wages (Wales) Order 2020 (“the Order”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. The Order revokes and replaces the Agricultural Wages (Wales) Order 2019 with changes which include increases to the 2019 minimum hourly rates for agricultural workers.

This Order is made under sections 3, 4(1) and 17 of the Agricultural Sector (Wales) Act 2014.

Procedure

Negative.

Technical Scrutiny

Three technical points are identified for reporting under Standing Order 21.2 in respect of this instrument:

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

1. Article 2 of the Order sets out the definitions of terms used throughout the Order. It is stated in article 2 that “the national minimum wage has the meaning given by section 10”. There is no other reference to the national minimum wage in the Order. Further, there is no reference to the legislation in which “section 10” can be found. Clarification is sought from the Welsh Government to confirm why this definition is included in the Order; and where “section 10” can be found and how this will be properly reflected in the Order.

2. Further explanation is required in relation to why Article 15 of the Order sets significantly different wage deductions which are permitted to be made in respect of agricultural workers who receive the benefit of accommodation.

Article 15(1) of the Order states that 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 wage payable for that week. Article 2 defines “a house” as “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”.

Article 15(2) of the Order states that 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 wage payable for each day in the week that the other accommodation is provided to the worker. “Other accommodation” is also defined in article 2 of the Order, and covers any living accommodation which is not a house but which is fit for human habitation; is safe and secure; provides a bed for the sole use of each individual agricultural worker; and provides clean drinking water, suitable and sufficient sanitary conveniences and washing facilities for agricultural workers. Presumably this could include a dormitory, hostel or similar.



It is surprising that an agricultural worker who is provided with a private self-contained house may only sustain a deduction of £1.50 per week for the benefit of living in that house. However, an agricultural worker who may only be provided with the lesser benefit of a bed in shared accommodation may sustain a deduction of £24.10 per week (based upon a five-day working week). A government response is required to explain the reasons for this discrepancy in deductions. We note that this point was also raised in our report on the Agricultural Wages (Wales) Order 2018 but the Government response on that occasion did not provide a full explanation for the discrepancy.

Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

3. The wording of the headings used for the tables in schedules 1 and 2 of the Order is different in the English and Welsh text. Further, within the Welsh text there is inconsistency in the headings used for the tables in schedules 1 and 2, and the remaining schedules.

Merits Scrutiny

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

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

1. We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a [letter](#) to the Llywydd dated 30 March 2020.

In particular, we note what the letter says in relation to the progress of this Order, in that the Agricultural Advisory Panel for Wales (“the Panel”) “agreed to increase the agricultural minimum wage rates and consulted on the proposals in the autumn of 2019. The Panel’s intention was 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. However, there was a two month delay in announcing the NMW/NLW as a result of the UK general election. The Panel reconvened to consider the proposed agricultural minimum wage rates in light of the announcement and subsequently submitted a revised Order”.

The Minister states in her letter that contravention of the 21 day-rule is “necessary and justifiable in light of the unavoidable circumstances that have delayed the process” and that “reducing any further delay in bringing uplifted agricultural wage rates into force is justified on the basis it will minimise the length of time agricultural workers covered by the AMW are disadvantaged in relation to their pay awards and make compliance easier for agricultural employers.” The [Explanatory Memorandum](#) for the Order asserts that “any delay would penalise those agricultural workers who are currently being paid lower rates of pay than they would have anticipated receiving from 1 April 2020.”

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

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable in relation to each of the technical reporting points.





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

2020 No. 347 (W. 78)

AGRICULTURE, WALES

**The Agricultural Wages (Wales)
Order 2020**

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 2019.

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 an agricultural 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.wales.

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

2020 No. 347 (W. 78)

AGRICULTURE, WALES

**The Agricultural Wages (Wales)
Order 2020**

Made 26 March 2020

*Laid before the National Assembly for
Wales* 27 March 2020

Coming into force 1 April 2020

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43. Revocation and transitional provision

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SCHEDULE 2 — AWARDS AND
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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.

(1) S.I. 2016/255 (W. 89).
(2) 2014 anaw 6.

PART 1

Preliminary

Title and commencement

1. The title of this Order is the Agricultural Wages (Wales) Order 2020 and it comes into force on 1 April 2020.

Interpretation

2.—(1) In this Order—

“agriculture” (*“amaethyddiaeth”*) includes—

- (a) dairy farming;
- (b) the production of any consumable produce for the purposes of a trade or business or any other undertaking (whether carried on for profit or not);
- (c) the use of land as grazing, meadow or pasture land;
- (d) the use of land for orchards, osier land or woodland;
- (e) the use of land for market gardens or nursery grounds;

“agricultural worker” (*“gweithiwr amaethyddol”*) means a person employed in agriculture in Wales, whether or not the whole of the work undertaken by virtue of that employment is undertaken in Wales;

“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;

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

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

“consumable produce” (“*cynnyrch defnyddiadwy*”) means produce grown for consumption or for other use after severance from the land on which it is grown;

“employment” (“*cyflogaeth*”) means employed under a contract of service or apprenticeship and “employed” (“*a gyflogir*”) and “employer” (“*cyflogwr*”) are to be construed accordingly;

“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⁽¹⁾ as if the accommodation was a workplace to which regulations 20 to 22 of those Regulations applied;

(1) S.I. 1992/3004.

“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;

“overtime” (“*goramser*”) means—

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

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

- (a) was taking annual leave;
- (b) was taking bereavement leave;
- (c) was taking statutory maternity, paternity, shared parental or adoption leave; or
- (d) was on a period of sickness absence;

“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;

“the national minimum wage” (“*isafswm cyflog cenedlaethol*”) has the meaning given by section 10;

“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⁾.

(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⁽²⁾.

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

(1) S.I. 2006/246.

(2) 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).

(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—

- (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 they are employed under either a contract of apprenticeship or 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.

(1) 2009 c. 22.

(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.

(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

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- (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.

article 12 of, and Schedule 4 to, this Order which is applicable to their grade or category.

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 wage payable 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 wage payable 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 £8.32 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 £1.58 for each hour of night work; and
- (d) a birth and adoption grant of £65.45 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 in the second year of employment;
- (b) 16 weeks in the third year of employment;
- (c) 19 weeks in the fourth year of employment;
- (d) 22 weeks in the fifth year of employment;

- (e) 26 weeks in the sixth and all subsequent years of employment.

(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—

$$\frac{QH}{DWEW}$$

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.

(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

(1) 1992 c. 4.

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.

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.

(1) S.I. 1998/1833.

(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 52 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 1/52nd 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 52 weeks immediately preceding the commencement of the worker's annual leave and dividing the total by 52.

(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 52 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—

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

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

(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 2019⁽¹⁾ (“the 2019 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 2019 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 Agricultural Wages (Wales) Order 2018 ⁽²⁾, Agricultural Wages (Wales) Order 2017 ⁽³⁾, the Agricultural Wages (Wales) Order 2016 ⁽⁴⁾, the Agricultural Wages (England and Wales) Order 2012 and every order revoked by article 70 of that Order.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
26 March 2020

(1) S.I. 2019/511 (W. 118).
(2) S.I. 2018/433 (W. 76).
(3) S.I. 2017/1058 (W. 271).
(4) S.I. 2016/107 (W.53).

SCHEDULE 1 Articles 5 and 7
**AWARDS AND CERTIFICATES OF COMPETENCE FOR GRADE 2
 WORKERS**

Tables

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

Tables

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

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	£3.60
Grade 1 worker (16 – 20 years of age)	£7.84
Grade 1 worker (21-24 years of age)	£8.20
Grade 1 worker (aged 25+)	£8.72
Grade 2 worker	£8.72
Grade 3 worker	£8.86
Grade 4 worker	£9.53
Grade 5 worker	£10.06
Grade 6 worker	£10.83
Year 1 Apprentice	£4.15
Year 2 Apprentice (aged 16-17)	£4.37
Year 2 Apprentice (aged 18-20)	£6.45
Year 2 Apprentice (aged 21-24)	£8.20
Year 2 Apprentice (aged 25+)	£8.72

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

Explanatory Memorandum to the Agricultural Wages (Wales) Order 2020

This Explanatory Memorandum has been prepared by the Department for Environment, Energy 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 2020. I am satisfied the benefits justify the likely costs.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

27 March 2020

1 Description

The Agricultural Wages (Wales) Order 2020 (“the 2020 Order”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. The 2020 Order revokes and replaces the Agricultural Wages (Wales) Order 2019 (“the 2019 Order”) with changes which include increases to the 2019 minimum hourly rates 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, 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.

Section 2 of the Act and article 3(2) of the Panel Order specify the Panel’s functions. A key function of the Panel is to prepare agricultural wages orders in draft, to consult upon them and 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 and re-submission.

The Panel reviewed the level of minimum hourly rates and other agriculture related allowances and benefits prescribed in the 2019 Order and, in accordance with their functions, prepared the 2020 Order which increases minimum hourly rates for all grades and categories of agricultural worker and certain allowances and benefits.

The Panel also proposed making three further changes in response to recommendations about the clarification in the wording of articles 15(1) and (2) (relating to the accommodation offset allowance) and 21(2) (relating to agricultural sick pay entitlement) of the 2019 Order made by the Legislation, Justice and Constitution Committee (the ‘LJCC’) and to ensure that articles 31 and 34 (calculation of holiday pay) of the 2020 Order keep pace with proposed changes to the Working Time Regulations 1998 which are due to take effect from April 2020. These changes improve clarity of the Order but may not have direct cost/benefit implications.

The Panel’s intention is that the provisions of the 2020 Order take effect from 1 April 2020, 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 Legislation, Justice and Constitution Committee

Contravening the 21 day convention is proposed to ensure the 2020 Order comes into force on the 1 April 2020. This will minimise the time taken to bring the new AMW rates into force, ensuring workers are paid in accordance with the AMW rates agreed by the Panel.

Contravention of the convention is thought necessary and justifiable in this case on the basis it will minimise the length of time agricultural workers are disadvantaged in relation to their pay awards by bringing forward uplifted agricultural wage rates and allowances and make compliance easier for agricultural employers.

Any delay would penalise those agricultural workers who are currently being paid lower rates of pay than they would have anticipated receiving from 1 April 2020.

3 Legislative background

The 2020 Order is made pursuant to sections 3, 4(1) and 17 of the 2014 Act and is 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.

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.

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 grade structure provides an incentive for the further up-skilling of the agricultural workforce and helps set clear career paths for all those employed in agriculture. In the 2020 Order, Grade 1 (aged 25+) and Grade 2 workers are set at the same rate as the NWM/NLW 2020.

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.

The 2020 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 NMW and NLW.

The 2020 Order will replace the 2019 Order and increase the 2019 minimum pay levels for all categories and grades of agricultural workers in Wales. The Panel agreed the following:

- an increase of 6% for Grade 1 workers (aged 21+) and Year 2 Apprentice (aged 21+);
- an increase of 5% for Year 2 Apprentice (aged 18-20);
- an increase of 4% for Year 1 Apprentice;
- an increase of 3% for Grade 2 workers; and
- an increase of 2% for Grade 1 workers (aged under 21), Grade 3-6 workers and Year 2 Apprentice (aged 16-17)

The Panel also agreed increases of 2% for the allowances.

The minimum hourly wage rates set for Grade 1 workers (aged 21+), Grade 2 workers and Year 2 Apprentice (18+) in the 2020 Order match the 2020 NMW/NLW rates and the minimum hourly wage rates for all other grades are above the 2020 NMW/NLW rates. It should be noted however, the grades with the minimum hourly wages rates set at the 2020 NMW/NLW levels have a higher percentage increase from the rates in the 2019 Order than those with rates set above the 2020 NWM/NLW. This suggests that the percentage increase (2%) in hourly wage rates (3-6%) in the 2020 Order from the 2019 Order is lower than the percentage increase in NWM/NLW levels from 2019 to 2020, apart from the grades with the hourly rates set at NWM/NLW levels.

The Panel proposed the following increases for the Agricultural Wages (Wales) Order 2020.

Grade	2020 rates	2019 rates	% of increase
Grade 1 Worker of compulsory school age (13-16)	£3.60	£3.54	2%
Grade 1 Worker (aged 16-21)	£7.84	£7.70	2%
Grade 1 Worker (aged 21-24)	£8.20**	£7.70*	6%
Grade 1 Worker (aged 25+)	£8.72**	£8.21*	6%
Grade 2 – Standard Worker	£8.72**	£8.45	3%
Grade 3 – Lead Worker	£8.86	£8.70	2%
Grade 4 – Craft Grade	£9.53	£9.36	2%

Grade 5 – Supervisory Grade	£10.06	£9.88	2%
Grade 6 – Farm Management Grade	£10.83	£10.64	2%
Year 1 Apprentice	£4.15**	£4.00	4%
Year 2 Apprentice (aged 16-17)	£4.37	£4.29	2%
Year 2 Apprentice (aged 18-20)	£6.45**	£6.15*	5%
Year 2 Apprentice (aged 21-24)	£8.20**	£7.70*	6%
Year 2 Apprentice (aged 25+)	£8.72**	£8.21*	6%
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	£8.32	£8.17	2%
The night work allowance for each hour of night work	£1.58	£1.55	2%
The birth and adoption grant	£65.45	£64.29	2%

* Rates are set at 2019 NMW/NLW levels.

** Rates are set at 2020 NMW/NLW levels.

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 very seasonal nature of agricultural work in many agricultural sectors, for example many workers are required to work above their contracted hours during lambing or at harvest time. The 2020 Order will maintain overtime rates at 1.5 times above the applicable basic rates.

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. It is payable on top of the worker's applicable hourly rate however 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 or Adoption Order.

5 Consultation

A targeted consultation on the proposed changes was conducted from 19 September to 16 October 2019. The proposals were emailed to an extensive list of stakeholders and were made available on the Panel's web platform. Details of the Consultation also appeared in an article on the Farmers Weekly website and as a "Letter to the Editor" in the Farmers Guardian.

Key stakeholders, including the farming unions, UNITE and agricultural colleges were included in the consultation. Panel members were also encouraged to share the proposals throughout their networks.

There were four responses in total to the consultation. One response was in favour of the changes, one abstained and two raised concerns over the Order as a whole. The Panel met to discuss the responses to the consultation. The Panel then submitted their proposals to Welsh Government.

After the NMW/NLW rates were published on 31 December 2019, the Panel met again in January 2020 to review the proposed minimum hourly rates in the 2020 Order.

6 Regulatory Impact Assessment (RIA) of the Agricultural Wages (Wales) Order 2020

6.1 Proposed changes in the 2020 Order

6.1.1 Minimum Hourly Rates of Pay and Allowances

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

The proposed minimum hourly rates for Grade 3-6 workers are 2%-24% above national minimum wage rates from April 2020.

The rates for Year 2 apprentices (aged 16-17) are 5% above NMW rates.

Grade 1 and 2 workers and other apprentices will be paid at NMW / NLW rates.

Grade or category of worker	2020 Order	Minimum hourly rate of pay (April 2020)	% above minimum wage
Grade 1 worker under compulsory school age (aged 13-16)	£3.60	-	-
Grade 1 worker (aged 16-20)	£7.84	£6.45 (18-20) £4.55 (under 18)	-
Grade 1 worker (aged 21-24)	£8.20	£8.20	Same rate
Grade 1 worker (aged 25+)	£8.72	£8.72	Same rate
Grade 2 worker	£8.72	£8.72	Same rate
Grade 3 worker	£8.86	£8.72	2%
Grade 4 worker	£9.53	£8.72	9%
Grade 5 worker	£10.06	£8.72	15%
Grade 6 worker	£10.83	£8.72	24%
Year 1 Apprentice	£4.15	£4.15	Same rate
Year 2 Apprentice (aged 16-17)	£4.37	£4.15	5%
Year 2 Apprentice (aged 18-20)	£6.45	£6.45 (worker aged 19+)	Same rate
Year 2 Apprentice (aged 21-24)	£8.20	£8.20	Same rate
Year 2 Apprentice (aged 25+)	£8.72	£8.72	Same rate

In addition, the following changes are proposed in the 2020 Order:

- Dog allowance: £8.32 (£8.17 in 2019)
- Night work allowance: £1.58 (£1.55 in 2019) per hour of night work

- Birth and adoption grant: £65.45 (£64.29 in 2019) for each child
Changes in these allowances represent 2% increase from the 2019 Order.

6.1.2 Accommodation offset allowance (Article 15(1) and 15(2))

The LJCC found there is an ambiguity in the wording of Articles 15(1) and 15(2) which could lead to an alternative interpretation in relation to the amount and frequency of permitted deductions of the accommodation offset allowance, provided for under the Order.

In order to provide the clarity the LJCC considers is lacking in the current drafting of Article 15, the Panel suggested that the wording be amended. The policy intent however, has not changed.

6.1.3 Limitation on the entitlement to agricultural sick pay (Article 21(2))

The Panel proposed a change to Article 21(2) regarding the limitation on the entitlement to agricultural sick pay as the LJCC highlighted the fact where an agricultural worker has been employed for exactly 24, 36, 48 and 59 months respectively they can be entitled to the lower and higher level of agricultural sick pay entitlement. For example, an agricultural worker employed for exactly 24 months will be entitled to 13 weeks sick pay (on the basis of being employed for not more than 24 months) and 16 weeks sick pay (on the basis of being employed at least 24 months).

In order to provide the clarity that the LJCC considers is lacking the Panel suggested the wording be amended. The policy intent has not changed.

6.1.4 Calculation of Holiday Pay (Article 34(4))

In order to ensure the 2020 Order keeps step with a change in the UK Employment rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018, the Panel proposes that the provision in Article 34(4) be amended to increase the reference period for determining an average week's pay for the purposes of calculating holiday pay from 12 weeks to 52 weeks. It also suggested to make the same amendment to Article 31(1) in relation to the calculation of an agricultural worker working variable hours' holiday entitlement.

6.2 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 AWO Order 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 2019 levels in accordance with the provisions of the Agricultural Wages Order (Wales) 2019. 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 2019 NMW/NLW rates where the rates in AWO 2019 would fall below the NMW/NLW from April 2020. 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 sector². 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, AWO 2017, AWO 2018 and AWO 2019 to ensure that the agricultural sector in Wales operated under provisions would be in step with changes in economic conditions. The previous regulatory impact assessments suggested that the benefits of AWO 2016, AWO 2017, AWO 2018 and AWO 2019 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.

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

² The Agricultural Sector (Wales) Act 2014 (the Act) maintains the Agricultural Minimum Wage (AMW) arrangements in Wales, following the abolition of the Agricultural Wages Board (AWB) for England and Wales in 2013.

The Act provides for the establishment of an Agricultural Advisory Panel for Wales (the Panel). The Panel was established 1 April 2016. Its functions include reviewing wages and other terms and conditions of employment, drafting agricultural wages orders and promoting career development in the agricultural sector.

- 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 AMW regime. Instead, it is an assessment of additional costs and benefits of the 2020 Order relative to the AWO 2019 scenario which also takes account of the NMW/NLW changes from April 2020.

Option 2: Implementing New Order. This is the policy alternative, which would involve replacing the current Order (2019) with a new Order (2020). 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 (2020)	AWO (2019)	National MW	% increase from baseline	% increase from 2019 rate
Grade 1 worker under compulsory school age (13-16)	£3.60	£3.54	-	2%	2%

Grade 1 worker over compulsory school age (16-20)	£7.84	£7.70	£6.45 (18-20) £4.55 (under 18)	2%	2%
Grade 1 worker over compulsory school age (21-24)	£8.20	£7.70	£8.20	Same rate	6%
Grade 1 work (aged 25+)	£8.72	£8.21	£8.72	Same rate	6%
Grade 2 worker	£8.72	£8.45	£8.72	Same rate	3%
Grade 3 worker	£8.86	£8.70	£8.72	2%	2%
Grade 4 worker	£9.53	£9.36	£8.72	2%	2%
Grade 5 worker	£10.06	£9.88	£8.72	2%	2%
Grade 6 worker	£10.83	£10.64	£8.72	2%	2%
Year 1 Apprentice	£4.15	£4.00	£4.15	Same rate	4%
Year 2 Apprentice (aged 16-17)	£4.37	£4.29	£4.15	2%	2%
Year 2 Apprentice (aged 18-20)	£6.45	£6.15	£6.45 (worker aged 19+)	Same rate	5%
Year 2 Apprentice (aged 21 -24)	£8.20	£7.70	£8.20	Same rate	6%
Year 2 Apprentice (aged 25+)	£8.72	£8.21	£8.72	Same rate	6%

The increase from the baseline is 2% for the grades with hourly wage rates set above the NWM/NLW levels. This compares to the average year-on-year growth of 1.8% in regular pay and 1.7% in total pay in the UK between January 2019 to December 2019 in real terms (Source: ONS <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsearn01>).

The monthly average for the 12-month Consumer Price Inflation (CPI) rate was 1.8% in 2019 (Source: ONS <https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerriceinflation/december2019>).

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 NMW/NLW rates when discussing their recommendations for the Order.

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

The minimum hourly wage rate for Grade 1 workers under compulsory school age will increase to by 2% (from £3.54) to £3.60 in the proposed 2020 Order. 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)**

The hourly minimum wage rate for Grade 1 workers aged between 16 and 20 was £7.70 within AWO 2019. In the proposed 2020 Order, this will be set at £7.84. For Grade 1 workers aged 21-24, the proposed rate is £8.20. This is the same as the NMW/NLW 2020, which means no change from the baseline (although the rate has increased from £7.70 in the 2019 Order). There is no accurate data on the number of workers for this category (Grade 1 worker aged 16-24). Although the number of farmer workers under the age of 25 was estimated to account for 33% of total number of the farmer workers in Wales³, there is no estimate available on subgroups by grade. Therefore, it is not possible to estimate the impact of hourly wage rate change for Grade 1 workers aged 16-24.

- **Grade 1 workers (aged 25+)**

For grade 1 workers aged over 25, the minimum hourly wage rate proposed in the 2020 Order matches the level of NMW from April 2020. Therefore, while the proposed minimum wage rate is higher than the AWO 2019 rate, it is not higher than the baseline for this group hence there is no change relative to the baseline.

- **Grade 2 workers**

For grade 2 workers, the minimum hourly wage rate proposed in the 2020 Order matches the level of NMW from April 2020. Therefore, while the proposed minimum wage rate is higher than the AWO 2019 rate, it is not higher than the baseline for this group hence there is no change relative to the baseline.

- **Grade 3-6 workers**

Compared to the minimum hourly wage rates in the 2019 Order, the proposed changes in the 2020 Order includes 2% increases in the minimum wage rate for Grade 3-6 workers. This increase is largely in line with inflation in the last 12 months.

Traditionally, the AWB maintained a pay differential between Grade 1 and 2 at around 10% (see AWO 2012 and AWO 2016) in order to underline the transitional nature of Grade 1 (initial Grade) and encourage workers' entry to Grade 2 (standard Grade). The difference was much smaller at 0.4% in the AWO 2017 but the differences was 6% and 3% respectively in the AWO 2018 and 2019 (see Table 2).

Within the proposed 2020 Order, the proposed minimum wage rate for Grade 2 workers is set at the same level of Grade 1 workers (aged 25 and above) which also matches with the NMW/NLW 2020 levels. This suggests that the

³ Source: Brookdale Consulting Report to the Welsh Government. Agriculture in Wales: Future Labour Requirements for Welsh Agriculture 2017–2025.

transitional grade (Grade 1) could potentially be eliminated as it effectively has the same rate as Grade 2.

Table 2: Hourly Wages Rates by Grade in AWO 2012, 2016-2020 and in-grade Differences.

Grade	Wage Rates 2012-2020						In-grade difference, 2012-2020					
	2012	2016	2017	2018	2019	2020	2012	2016	2017	2018	2019	2020
Grade 1 worker (aged 25+)	£6.21	£7.20	£7.51	£7.83	£8.21	£8.72	-	-	-	-	-	-
Grade 2 worker	£6.96	£7.39	£7.54	£8.29	£8.45	£8.72	12%	10%	0.4%	6%	3%	0%
Grade 3 worker	£7.66	£8.12	£8.22	£8.54	£8.70	£8.86	10%	10%	9%	3%	3%	2%
Grade 4 worker	£8.21	£8.72	£8.82	£9.16	£9.36	£9.53	7%	7%	7%	7%	8%	8%
Grade 5 worker	£8.70	£9.23	£9.34	£9.70	£9.88	£10.06	6%	6%	6%	6%	6%	6%
Grade 6 worker	£9.40	£9.97	£10.09	£10.48	£10.64	£10.83	8%	8%	8%	8%	8%	8%

Source: Hourly wage rates are from AWOs 2012, 2016, 2017, 2018, 2019 and the AWO 2020 proposal. Percentage paid above the previous grade is calculated from minimum hourly wage rates.

Similarly, the difference between the minimum wage rates for Grade 2 and Grade 3 has become smaller at 2% in the proposed 2020 Order. In AWO 2012, 2016 and 2017, the difference between the two grades was around 10%. Since 2018, the difference between Grade 2 and 3 has decreased to 2-3%. This change means that the minimum wage rate for the majority of agricultural workers would now be equivalent to the NLW (or marginally above it) and the differences in hourly wage rate have become smaller between Grade 1 to 3. This change may lead to reduced incentives for Grade 1 and 2 workers to upskill so as to progress to Grade 3, although some workers may still be incentivised to pursue training to reach higher grades.

For other grades (4-6), the in grade difference are maintained at the same level as previous years (6-8%).

- **Year 1 and Year 2 Apprentice**

The minimum wage rates for the Year 1 and Year 2 apprentices within the 2020 Order are set as the same levels as the NMW/NLW 2020 apart from Year 2 apprentices aged 16-17. For this group, the hourly wage rate is higher than the NMW/NLW rates for Apprentice which other sectors would abide to. This will help the agricultural sector to become an appealing career choice for this particular group.

Compared to AWO 2019, the proposed hourly wage rates in the 2020 Order are 2% higher.

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 the dog allowance, night allowance and birth and adoption grants, all of which have a 2% increase from the AWO 2019 rate.

Table 3: Changes to other provisions

Type	AWO 2020	AWO 2019	% increase
Dog allowance	£8.32	£8.17	2%
Night allowance	£1.58	£1.55	2%
Birth and adoption grants	£65.45	£64.29	2%

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

Farmers will need to familiarise themselves with changes to the calculation of holiday pay. There may be an additional cost to the employer of having to gather data and calculate pay for a longer time period. Where data is recorded electronically this cost should be zero/minimal. Where data is kept in hard copy there will be a material time burden. In addition, holiday pay may increase/decrease in individual cases depending on activity and pay during the extended reference period. Beyond this it is difficult to assess what, if any, the impact of extending the reference period will be.

- **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 and Hours of Agricultural and Horticultural Workers 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

⁴ Available at:

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

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 limited amount of Wales specific information has been identified as an area for attention. Work is underway to both fully explore the existing information sources and to gather up-to-date information directly to inform future orders.

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 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 2020 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 four formal cases needing varying levels of investigation during 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. Although it is difficult to predict accurately the number of cases that may come forward, the enforcement will be met from existing provision.

- **Administrative cost**

In addition to the cost of compliance, there will be a cost to farm businesses for adjusting to the requirements of the 2020 Order.

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

It is assumed that each employer would need one hour⁵ to familiarise themselves with the 2020 Order and make adjustments to pay rates and other

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

provisions. Based on data from the Office for National Statistics (ONS)' Annual Survey of Hours and Earnings (2019)⁶, it is assumed that the average cost per hour of a farmer's time is £12.07 (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 £10.21 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 14,980 businesses in agriculture, forestry and fishing sector in Wales in 2019 with 2,900 businesses being employers⁷. The administrative costs to farm businesses are therefore estimated at £35k for Wales assuming one hour required per business. If using the median value for the labour cost (£10.21 per hour), the total admin costs to farm businesses are estimated at £29.6k. 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 2,900 agricultural businesses who employed labour use the AWO, but it is not known how many do use the AWO.

6.2.1 Evidence Review

In this RIA, we have reviewed the evidence presented in the previous RIAs of AWO 2016, AWO 2017, AWO 2018, AWO 2019 and considered additional literature where relevant. Our conclusion is that the key points made in the previous RIAs on the minimum wage impacts are still valid, which are summarised below. 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

⁶ Estimates for 2019 (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: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry2digitsicshetable4>

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 2018 within statistics on BUSINESS POPULATION ESTIMATES FOR THE UK AND REGIONS 2018. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2018>.

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 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. This seems unlikely to change given the limited use of multiple wage-minima arrangements.

6.3 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

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).]

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.

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 the 2012 Defra study which did not use Wales specific data and is relatively dated. The impact on other categories of workers or the impact of changes in allowances generally affect very small groups of workers and therefore 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 2020 Order. 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 2020 Order represents a rise of 2% rise for agricultural workers within Grade 3-6. This affects over 2,800 workers (with 28% of whom being part-time and casual workers) out of the 13,200 paid agricultural workers in Wales in 2019.

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.

Option 1: Do nothing

This is the baseline option and as such there are no additional costs or benefits associated with this 'do nothing' option.

Option 2: Introducing Agricultural Wages (Wales) Order 2020 to replace AWO 2019.

6.3.1 Impact on Employment

Empirical 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 paid¹¹. This is consistent with the findings from the literature review in the previous RIAs of AWO 2016, AWO 2017, AWO 2018 and AWO 2019 for Wales.

In the previous RIAs, employment effect was estimated using a minimum wage elasticity of -0.19 (an average value from the literature). This mean value was based on a meta-analysis¹² (carried out in 2017) of 236 estimated minimum wage elasticities from 16 UK studies. The median value from these

¹¹ Riley, R. and Bondibene, C. (2015). Raising the Standard: Minimum Wages and Firm Productivity. National Institute of Economic and Social Research.

¹² A statistical analysis of a large collection of results from individual studies for the purpose of integrating the findings.

236 estimated elasticities was much smaller at -0.03 which means increases in minimum wages would lead to statistically insignificant reductions in employment. A more recent comprehensive systematic review and meta-analysis of the UK NMW empirical research carried out RAND Europe¹³ suggests an even smaller employment effect no overall statistically or economically significant adverse employment effect, neither on employment and hours nor on employment retention probabilities. The minimum wage elasticities reported by this study were -0.0097 and -0.0022 when considering partial correlations. This adverse employment effect is so small that it is negligible and has no meaningful policy implication.

The agricultural labour force in Wales in 2019 totalled 52,900 people, with 13,200 of these being employed as farm workers (see Table 7 Appendix A). No data is available as to the proportion of the total farm workers in each grade in Wales. However, Defra produced such data for the UK as a whole for 2012 based on historic data and assumptions. The estimates from this study can be combined with the 2019 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 3,000 workers may be within Grade 1; 7,000 workers within Grade 2 and some 2,800 workers within Grades (3-6).

Based on these estimates, an application of the mean elasticity estimate (-0.19) and the assumption that workers move from the current minimum to the new minimum wage, it is estimated that there would be a reduction in employment of 11 farm workers (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 2019 and the 2020 Order; instead, it has taken account of forthcoming increases in NMW and NLW from April 2020. If using the median value of elasticity coefficient -0.03, the reduction in employment would be 2 people (see Table 16 at Appendix B). If using the elasticities of -0.0097 and -0.0022, the reductions in employment would be minimal. Overall, the impact on employment is negligible.

In terms of reductions to hours worked, some evidence¹⁴ suggests that it is likely that some farm businesses will seek to absorb higher labour costs through reducing the number of hours worked in addition to other effects on employment, although this cannot be estimated with any degree of accuracy.

¹³ Hafner, M et.al, 2017. The impact of the National Minimum Wage on employment: a meta-analysis. A report for the UK Low Pay Commission.

¹⁴ Low Pay Commission (LPC) reviewed the impact of the National Minimum Wage (NMW) in 2019 and concluded that in general there was little effect on employment but found some evidence that the NMW had led to small reductions in hours. Although the evidence suggested that the introduction of the NLW in 2016 and the subsequent upratings in 2017 and 2018 did not affect working hours for any of main groups of directly affected employees, the longitudinal Labour Force Survey found that men who worked full-time experienced a reduction in working hours following the introduction of the NLW in 2016. This report is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852508/The_impact_of_the_minimum_wage_on_employment_and_hours.pdf

6.3.2 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 £0.9million in 2020-21 with the largest impact from Grade 4 workers. This represents a transfer from farm businesses to farm labour, with the former incurring an equivalent cost of £0.9million. 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 the 2012 Defra cost model, it still represents the best estimate that is available for calculating the additional labour costs as a result of pay rate rises.

The limited amount of Wales specific information has been identified as an area for attention. Work is underway to both fully explore the existing information sources and to gather up-to-date information directly to inform future orders.

It should also be noted that the difference in minimum wage rates between Option 1 and 2 is not the full difference between AWO 2019 and the 2020 Order. It also takes account of forthcoming statutory NMW and NLW from April 2020.

Table 4: Estimated changes in annual wage costs, waged agricultural workforce, Wales 2020-21 (a-c)

Grade	Full-time (£)		Part-time (£)		Casual (£)		Total (£)
	Basic	Overtime	Basic	Overtime	Basic	Overtime	
1	£0	£0	£0	£0	£0	£0	£0
2	£0	£0	£0	£0	£0	£0	£0
3	£101,402	£23,586	£36,062	£0	£0	£0	£161,051
4	£359,134	£83,534	£60,211	£0	£0	£0	£502,879
5	£139,428	£32,431	£17,387	£0	£0	£0	£189,246
6	£66,897	£15,560	£6,118	£0	£0	£0	£88,575
Total (£)	£666,862	£155,111	£119,778	£0	£0	£0	£941,751

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, such impacts are likely to be relatively marginal in overall terms. In general, changes in market conditions have a much larger impact on the agricultural sector than differences in wage rates. In other words, structural changes in the agricultural sector are more likely to be driven by the changes in market conditions while impact of the differences in wages rates are relatively modest.

The distribution by grade was based on data from Defra which was not Wales specific and has not been updated since 2012. As such, there are some uncertainties around whether the data from the Defra study is representative of the distribution of farm workers by grade in Wales. Therefore, sensitivity analysis was carried out to test the impact on the results of different distribution of farm worker by grade.

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%¹⁵. For composition 1, the wage cost of Option 2 is estimated at £0.9million. The wage costs based on composition 2 and 3 are both estimated at £0.8million. 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%	

¹⁵ 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 5	11%	3%	
Grade 6	5%	1%	

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

6.3.3 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.

6.3.4 Cost: government enforcement

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

6.3.5 Benefits

6.3.5.1 Impact on Earnings

Under the previously explained assumptions, the proposed changes to minimum wage rates are estimated to raise total wages received by agricultural workers by some £0.9 million per annum. It should be noted that these benefits are not related to full change between AWO 2019 and the 2020 Order; instead, they relate to the changes in wage rates taking account of forthcoming increases in NMW and NLW from April 2020.

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).

6.3.5.2 Impact on poverty including in-work poverty

By raising the earnings floor, minimum wages might be expected to raise household income. With all else being equal, some potential impact on in-work poverty is expected, 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.

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 13,200 waged workers within the agriculture sector in Wales in 2019, 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 9,500 farm workers on part-time or seasonal basis.

There is an increase of 2% in hour rates for Grade 3-6 workers. This could positively impact some 2,000 people on full-time basis, 800 on part-time basis (see Table 10) in Appendix A.

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.

6.3.5.3 Impact on training and skills

It is anticipated that the 2020 Order will continue to enable up skilling and a clearer career structure within the agricultural sector. It will contribute to developing and retaining skills across the entire agricultural sector. ADAS carried out a study on the use of AWO for Welsh Government in early 2016 which involved a survey of 176 farm businesses that employed labour across different farm size and type. The survey collected responses from 34 AWO users, 109 non-users and 33 who had never heard of the AWO. Among those who were aware of the AWO (143 farmers), a higher percentage (49%) of AWO users than (45%) non-users thought AWO was somewhat or very useful in staff skill development and performance, although this difference is not statistically significant. Within the non-users of AWO (109 farm businesses), 41% thought AWO would be useful in encouraging staff to seek new skills or qualifications in order to obtain higher grades. It should be noted, however, the percentage of surveyed farm businesses who used AWO was relatively low (20%) which suggests that the actual impact of AWO on training and skills might be relatively limited in scale.

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 the 2020 Order are generally higher than NMW/NLW and it maintains a privilege rate not universally enjoyed by other sectors, this should help to retain the employment and skills within the agricultural industry. The up skilling impact is more related to the pay structure, which will be maintained under the 2020 Order. However, the potential increase in labour cost may to some extent negatively affect the provision of up skilling by employers.

6.4 Sector impacts

6.4.1 Impact on local government

No evidence of significant differential impact.

6.4.2 Impact on voluntary sector

No evidence of significant differential impact.

6.4.3 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, AWO 2017, AWO 2018 and AWO 2019. 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 14,980 agricultural, forestry and fishing businesses in Wales and 19% are employer businesses in 2019. The figures for England were 105,570 and 37%. The data suggests that agriculture in Wales is dominated by small businesses (16% being businesses that employ less than five employees, less than 4% being businesses with five and more employees) and the majority of businesses do not employ labour (74%). 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 involved 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 (cost of paid labour as a percentage of 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 (2019)

Agriculture, Forestry and Fishing	England		Wales	
	No. of Businesses	%	No. of Businesses	%
Number of businesses	105,570	100.0	14,980	100.0
Number of employers	39,125	37.1	2,900	19.4
With no employees (unregistered)*	6,355	6.0	1,050	7.0
With no employees (registered)*	60,090	56.9	11,030	73.6
1	13,345	12.6	1,195	8.0
2-4	17,460	16.5	1,175	7.8
5-9	5,220	4.9	395	2.6
10-19	1,850	1.8	105	0.7

20-49	800	0.8	25	0.2
50-99	265	0.3	5	0.0
100-199	100	0.1	0	0.0
200-249	20	0.0	0	0.0
250-499	40	0.0	0	0.0
500 or more	25	0.0	0	0.0

Source: ONS (2019) Business population estimates for the UK and regions 2019, Table 20 and Table 21. <https://www.gov.uk/government/statistics/business-population-estimates-2019>
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 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.

6.4.4 Impact by sector

The impact on different sectors may vary depending on the composition of cost base of the farm businesses. The most recent Farm Business Survey data for Wales 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 percentage of total input for farm businesses in Wales by sector (2017-2018) and (2018-2019)

Farm type	Labour cost (£), casual and regular labour		Agricultural cost (£)		Share of labour cost (%)	
	2017-18	2018-19	2017-18	2018-19	2017-18	2018-19
LFA Cattle and Sheep Farms	3,400	3,300	82,000	89,100	4%	4%
Lowland Cattle and Sheep Farms	3,000	2,700	77,500	77,000	4%	4%
Dairy	18,600	23,700	312,000	372,800	6%	6%
All Farm Types	5,900	6,600	118,100	134,100	5%	5%

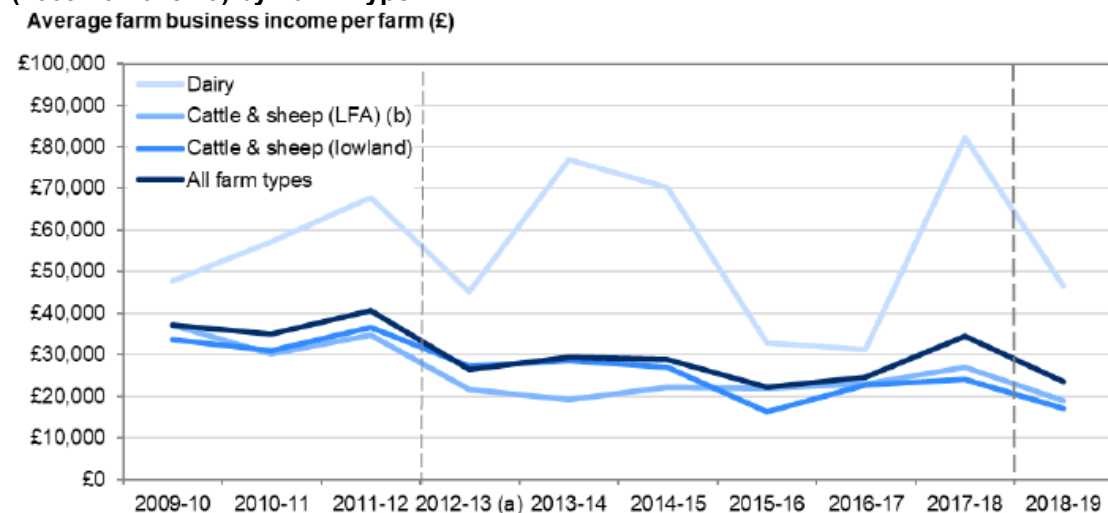
Source: Calculated from Farm Business Survey (FBS) data for Wales (2018/2019).
<https://gov.wales/farm-incomes-april-2018-march-2019>

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 2018-19 suggests that there is variation across the major farm types. For dairy farms, the average farm business income was around £46,600, whilst cattle and sheep farms in the Less Favoured Area (LFA) was around £18,900, and lowland cattle and sheep farms around £17,100¹⁶.

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 fluctuated most dramatically (large decline in 2015/16 and 2016/17, bounced back in 2017/18 fell substantially again in 2018/2019) in recent years and income for LFA cattle and sheep farms have been relatively stable but at low levels.

Figure 1: Farm Business Income (in real terms at 2018/19 prices) in Recent Years (2009/10-2018/19) by Farm Type



Source: Based on Statistics on Farm Incomes (2018-2019).

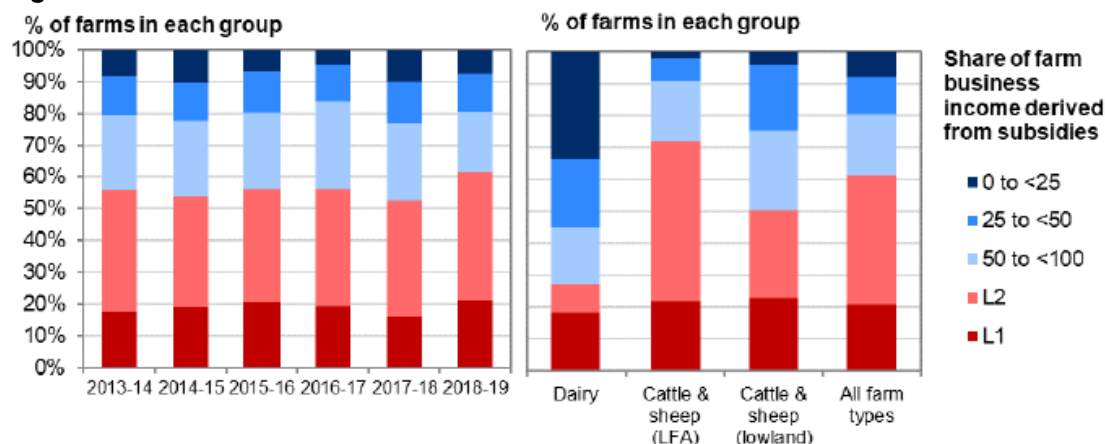
It should be noted however, the profitability data of farm businesses should be interpreted in the context that the industry is currently heavily relying on public subsidies. According to the Farm Business Survey, over 50% of all farms either made a loss or would have do done so without subsidy in the past few years since 2013-14 and this percentage increased to over 60% in year 2018-19 (see Figure 2). The level of dependence varies between farm types. In 2018-19, around 70% of cattle and sheep (LFA) farms either made a loss or would have done so without subsidy, compared with around 50% of lowland cattle and sheep farms and around 25% of dairy farms.

As a wider context, this dependence on subsidy can leave farms vulnerable to policy changes especially after Brexit. Increases in labour cost would add

¹⁶ Source: Welsh Government 2019. Statistics on Farm Incomes. Available at: <https://gov.wales/farm-incomes-april-2018-march-2019>. There was a significant decrease (-33% from the previous year) in farm business income across all farms in the year 2018-19.

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



Source: Farm Business Survey Quoted in Statistics Release on Farm Incomes in Wales 2018/19.

Note *: subsidies include agri-environment payments and single farm payments; L1 - Including subsidy, the farm made a loss; L2 - Without subsidy, farm would have made a loss.

Several studies (AHDB 2017; Dwyer 2018; House of Commons Welsh Affairs Committee, 2018)¹⁷ on the impacts of Brexit on agriculture in Wales suggest that many parts of the agricultural supply chain are heavily reliant on migrant workers from the EU. Often, the demand for labour in agriculture and the associated supply chain is on a seasonal basis as opposed to year-round employment. If there is no longer free movement of workers between the UK and the rest of the EU post-Brexit, availability and the cost of labour will be negatively impacted. The most vulnerable sectors include horticultural sector and wider agri-food sectors such as abattoirs, veterinary services, meat cutting, dairy processing plants and food packing.

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 2020 Order may add further pressure on the cost base increases when compared to baseline.

6.5 Consultation

The Panel met to decide whether to propose changes to the 2020 wages order on 2 September 2019. A targeted consultation on their proposals was conducted from 19 September – 16 October 2019. The proposals were emailed to an extensive list of people and organisations and were made available on the Agricultural Advisory Panel for Wales' page of the Welsh Government website. The consultation paper was also published in the Farmers Weekly and the Farmers Guardian. It did not lead to many more responses but at least an attempt has been made to widen the availability of

¹⁷ AHDB, 2017. Brexit Scenarios: an impact assessment: https://ahdb.org.uk/documents/Horizon_Brexit_Analysis_20September2016.pdf

Dwyer, J. 2018. The Implications of Brexit for Agriculture, Rural Areas and Land Use in Wales. Report to Public Policy Institute for Wales.

the consultation process

Key stakeholders, including the farming unions, UNITE, and organisations such as the NFU Cymru were included. Panel members were encouraged to share the proposals throughout their networks.

A total of four responses were received. One response was in favour of the changes, one abstained and two raised concerns over the Wages order as a whole.

All relevant concerns raised by the consultee organisations were discussed at the Panel meeting in November 2019.

6.6 Competition Assessment

See Appendix C.

6.7 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 the Defra study in 2012 which was not Wales specific. 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 the 2020 Order. It should also be noted that the two policy scenarios are not the full difference between the 2020 Order and the 2019 Order; the differences in labour minimum wage rates also take account of the forthcoming changes in NMW and NLW from April 2020.

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 NMW/NLW level from April 2020. This increase represents a 6% increase from the AWO 2019 rate. There is a 2% increase for Grade 3-6 workers. As there are no differences in Grade 1 and 2 worker in the 2020 Order proposal, the transitional Grade 1 could be considered for removal from the pay structure.

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

1. *Employment:* The proposed increases may lead to reduction of about 11 or fewer agricultural jobs in Wales. The overall impact on

employment is negligible. Reductions in hours worked may take place, but cannot be quantified.

2. **Earnings:** The total transfer could be raised by some £0.9 million per annum. This is the estimate for additional earnings under the 2020 Order also taking account of changes in NMW/NLW from April 2020.
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. **Administrative costs:** there will be a cost to farm businesses for adjusting to the requirements of the 2020 Order. It is estimated that this will cost farming businesses £29.6k-£35k.
5. **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 £0.9 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 2020 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 2019. It is reasonable to conclude that Option 2 could be more likely to support up skilling within the sector, as well as potentially having a positive impact on efficiency. However, this up skilling 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 2020 Order will benefit the waged workforce in terms of increasing earnings and supporting further up skilling within the industry. However, this up skilling 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 (2019)

Type of Labour		Number of people
Total farmers, partners, directors and spouses: (a)		
	Full-time	18,100
	Part-time (b)	21,600
	Total	39,700
Farm workers:		
	Regular full-time (c)	3,700*
	Regular part-time (b) (c)	3,600*
	Seasonal or casual workers	5,900*
	Total farm workers	13,200
Total labour force		52,900

Source: Welsh Government, Welsh Agricultural Statistics, 2019.

<https://gov.wales/sites/default/files/statistics-and-research/2019-11/survey-agriculture-and-horticulture-june-2019-730.pdf>

Note:

(a) Figures are for main and minor holdings.

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

(c) Includes salaried managers.

* Calculated based on percentage composition of different types of workers in 2016.

2. Earnings

Table 8: Persons engaged in work on agricultural holdings, Wales (2019)

	Type of labour	No. of people	% composition
Full-time	Regular full-time farm workers*	3,700	28%
Part-time	Regular part-time farm workers	3,600	27%
Casual	Seasonal or casual workers	5,900	45%
Total waged labour force		13, 200	100%

Note:

Source: Figures for farm workers by type are from Welsh Government, Welsh Agricultural Statistics are not available for 2018 but estimated base on 2016 figures on composition by type [online] <http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>. Number of workers in each category are calculated based on total no. of workers in 2018 and composition by type of workers in 2016.

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 2019.

Table 10: Number of workers at each AWO grade, estimated for Wales 2019(a)

Grade	Full-time	Part-time	Casual
Grade 1	222	504	2,301
Grade 2	1,443	2,268	3,599
Grade 3	333	252	
Grade 4	1,110	396	
Grade 5	407	108	
Grade 6	185	36	
Total	3,700	3,600	5,900

Note: (a) Totals do not add up to 13,200 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 (a)	42.5	36.3	6.2
part time (b)	17.2	17.2	0
Casual (c)	29.4	26.5	2.9

Source: (a) and (b) Total no. of hours worked are based on estimates from Brookdale Consulting Report to the Welsh Government. Agriculture in Wales: Welsh Labour Market Information. Basic and overtime hours are estimated based on total no. of hours and split between basic and overtime hours from the Defra (2012) Farm Labour and Wage Statistics.. (c) 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: (b) 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 2018 and 2019 for the agricultural industry and the increases in wage rates by grade for both basic and overtime pay.

Table 13: AWO hourly pay rates, baseline and 2020

Grade or category of worker	Basic pay 2020	Baseline Basic pay	Basic pay increase	Overtime pay increase*
Grade 1 work (aged 25+)	£8.72**	£8.72**	£0.51	£0
Grade 2 worker	£8.72**	£8.72**	£0.27	£0
Grade 3 worker	£8.86	£8.70	£0.16	£0.24
Grade 4 worker	£9.53	£9.36	£0.17	£0.25
Grade 5 worker	£10.06	£9.88	£0.18	£0.27
Grade 6 worker	£10.83	£10.64	£0.19	£0.29

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 2020.

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	£0	£0	£0	£0	£0	£0	£0
3	£101,402	£23,586	£36,062	£0	£0	£0	£161,051
4	£359,134	£83,534	£60,211	£0	£0	£0	£502,879
5	£139,428	£32,431	£17,387	£0	£0	£0	£189,246
6	£66,897	£15,560	£6,118	£0	£0	£0	£88,575
Total (£)	£666,862	£155,111	£119,778	£0	£0	£0	£941,751

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	3,027	-0.19	0.00%	0
Grade 2 workers	7,310	-0.19	0.00%	0
Grade 3-6 workers	2,863	-0.19	2.00%	-11
Total	13,200	-	-	-11

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	3,027	-0.03	0.00%	0
Grade 2 workers	7,310	-0.03	0.00%	0
Grade 3-6 workers	2,863	-0.03	2.00%	-2
Total	13,200	-	-	-2

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

Appendix D - The Panel's consultation letter

Agricultural Advisory Panel for Wales

Dear Consultee

The Agricultural Advisory Panel for Wales was established under The Agricultural Sector (Wales) Act 2014. One of its key responsibilities is "to prepare agricultural wages orders in draft, consulting on such orders and submitting them to the Welsh 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 2020. These proposals were made at the Panel's meeting on 2 September and are listed below.

The Panel came to these proposed rates taking into consideration the current uncertainties surrounding the agricultural industry and the need to make sure farm workers are paid at a fair rate.

1. Rates of Pay

The Panel proposes that the minimum rates of pay for agricultural workers increase by 1.8% across all pay bands as follows:

	Current Rate £ per Hour	Proposed Rate £ per Hour
Grade 1 (under 16)	£3.54	£3.60
Grade 1 (aged 16- 24)	£7.70	£7.84
Grade 1 (aged 25+)	£8.21	£8.36
Grade 2	£8.45	£8.60
Grade 3	£8.70	£8.86
Grade 4	£9.36	£9.53
Grade 5	£9.88	£10.06
Grade 6	£10.64	£10.83

Apprentice rates to be raised as follows:

	Current Rate £ per Hour	Proposed Rate £ Per Hour
Apprentice Year 1	£4.00	£4.07
Apprentice Year 2 (aged 16- 17)	£4.29	£4.37
Apprentice Year 2 (aged 18- 20)	£6.15	£6.26
Apprentice Year 2 (aged 21- 24)	£7.70	£9.09
Apprentice Year 2 (aged 25+)	£8.21	£8.36

These rates may be increased in the event of an increase in the National Minimum or National Living Wage above the proposed minimum rates of pay for agricultural workers.

Other proposed allowances:

Dog Allowance	£8.17	£8.32	Per Dog Per Week
Night Time Work Allowance	£1.55	£1.58	Per Hour of Night Work
Birth Adoption Allowance	£64.29	£65.45	For Each Child

2. Other Proposed Changes

The National Assembly for Wales' Constitutional and Legislative Affairs Committee, ('the committee') put the 2019 Wages order through a technical scrutiny. This highlighted minor clarification points within the order relating to:

a) Accommodation Offset Allowance

The committee felt Article 15(1) and (2) of the Agricultural Wages Order 2019 that there was potential ambiguity in relation to how the Accommodation Offset Allowance should be applied to agricultural workers' wages.

It was agreed by the Panel that Article 15 of the Order be reworded to remove any potential ambiguity and clarify that the Accommodation Offset Allowance should be a weekly deduction from the agricultural worker's minimum wage where a house (as defined by the Order) is provided and a daily deduction from the agricultural worker's minimum wage each day that other accommodation (as defined by the Order) is provided to the agricultural worker.

b) Agricultural Sick Pay

Article 21(2) sets out the maximum number of weeks an agricultural worker is entitled to agricultural sick pay in each period of entitlement. The committee highlighted there was an unintended consequence from the current wording of the Order in that, where an agricultural worker has been employed for exactly 24, 36, 48, and 59 months they can be entitled to the lower and higher level of

entitlement. As an example, an agricultural worker employed for exactly 24 months will be entitled to 13 weeks sick pay (on the basis of being employed for not more than 24 months) and 16 weeks sick pay (on the basis of being employed at least 24 months).

The Panel propose the following changes to the Article 21(2) Agricultural Wages Order 2020 by inserting the following:

“During each period of entitlement, the maximum number of weeks that an agricultural worker is entitled to agricultural sick pay is:

13 weeks in the second year of employment;

16 weeks in the third year of employment;

19 weeks in the fourth year of employment;

22 weeks in the fifth year of employment;

26 weeks in the sixth and all subsequent years of employment.”

c) Calculation of Holiday Entitlement and/or Pay for Those Working Variable Hours

In order to ensure the 2020 Order keeps step with changes in legislation which are due to come into force on 6 April 2020, the Panel propose that the provision in Article 34(4) be amended to increase the reference period for determining an average week's pay for the purposes of calculating holiday pay from 12 weeks to 52 weeks. In addition, in order to ensure consistency between the provisions of the Order the Panel propose that the reference period for determining the holiday entitlement of agricultural workers working variable hours under Article 31(1), also be changed from 12 weeks to 52 weeks. The Panel therefore propose the following amendment to the wording of the Articles: “Article 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 52 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.

Article 34 (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 52 weeks immediately preceding the commencement of the worker's annual leave and dividing the total by 52.”

I should be grateful for your comments on these proposals before 16 October 2019 so that the Panel may submit our advice to Ministers as required by the Agricultural Sector (Wales) Act 2014.

The responses to this consultation will be made publicly available. Should you wish to remain anonymous, please indicate this within your response. Thank you in advance for your input.

Please respond to the Panel Manager in writing at the address below or by email to:

Ryan Davies
Agricultural Advisory Panel Manager
Welsh Government
Spa Road East
Llandrindod Wells
Powys
LD1 5HA

Ryan.Davies@gov.wales

Yours sincerely

Lionel Walford
Chair
Agricultural Advisory Panel for Wales

CONSULTATION DISTRIBUTION LIST

A	Aberdeen-Angus Cattle Society
	Action for Children
	Action on Hearing Loss (RNID)
	ADAS
	Age Alliance Wales
	Age Cymru
	a:gender
	Agricultural Business
	AHDB Dairy
	All Wales People First
	Animal & Plant Health Agency (APHA)
	Associated British Ports
	Association of Labour Providers (ALP)
	Association of Professional Staffing Companies (APSCo)
	Atkins Global
	Autism Spectrum Connections Cymru (ASCC)
B	Baha’l Council for Wales
	BAM Nuttall Ltd
	Barnardo’s Cymru
	BAWSO
	Bevan Foundation
	Bi Cymru
	Black Environment Network (BEN UK)
	Brecon Beacons National Park
	British Blonde Society
	British Blue Cattle Society
	British Deaf Association (Wales)
	British Dyslexia Association
	British Limousin Cattle Society
	British Pakistan Foundation
	British Red Cross (Wales)
	British Retail Consortium (BRC)
	British Simmental Cattle Society
	British Veterinary Association
	British Water
	British Youth Council
Brown Swiss Cattle Society	
C	CADW
	Cafod
	Campaign for the Protection of Rural Wales (CPRW)
	Canal and River Trust
	Canolfan Dysgu Cymru
	Cardiff City and County Council
	Carers Wales

	Cartrefi Cymru
	Catch Up
	Celtic Ecology & Conservation Ltd
	Central Association of Agricultural Valuers (CAAV)
	Centre for Ageing and Dementia Research
	Centre for Alternative Technology
	Centre for Social Justice (CSJ)
	Centre of Sign Sight Sound
	Cered
	Change Grow Live
	Chartered Institute for Environmental Health
	Chartered Institute of Housing
	Children in Wales / Plant yng Nghymru
	Children's Commissioner for Wales
	The Church in Wales
	Chwarae Teg
	Citizens Advice Cymru
	Clee, Tompkinson & Francis
	Clwyd-Powys Archaeological Trust
	Coal Authority
	Coastal Zone and Marine Environment Studies Research Unit
	Colegau Cymru
	Coleg Cambria
	Coleg Cymraeg Cenedlaethol
	Coleg Sir Gar
	Common Vision
	Communication Matters
	Community Housing Cymru
	Community Land Advisory Service (CLAS Cymru)
	Confederation of British Industry (CBI)
	Conservation Volunteers (TCV)
	Consortium
	Constructing Excellence in Wales
	Contact Cymru (Contact a Family)
	Continuous Cover Forestry Group (CCFG)
	Council for Wales Voluntary Youth Services (CWYVS)
	Country Land & Business Association (CLA)
	Crown Estate
	CTP International
	Cyfieithwyr Cymru
	Cymdeithas Eisteddfodau Cymru
	Cynnal Cymru
	Cytun

D	Dairy Development Centre (DDC)
	Dairy Group
	Dartmoor Society
	Davis Meade Property Consultants (DMPC)
	DEFRA

	Denbighshire County Council
	Dept of Agriculture, Environment & Rural Affairs – NI (DAERA)
	Dept for Business, Energy & Industrial Strategy (BEIS)
	Disability Advice Project
	Disability Arts Cymru
	Disability Powys
	Disability Sport Wales (DSW)
	Disability Wales / Anabledd Cymru
	Diverse Cymru
	Duffryn Community Link
	Dwr Cymru
	Dyfi Biosphere
E	Edward Perkins Chartered Surveyors
	EH Law
	Eisteddfod Genedlaethol Cymru
	Elan Valley Trust
	Energy Savings Trust
	Environment Agency
	Epilepsy Wales
	Equality & Human Rights Commission
	Ethnic Minorities and Youth Support Team Wales (EYST)
Evangelical Alliance Wales	
F	Farmers Union of Wales (FUW)
	Farming & Wildlife Advisory Group (FWAG)
	Federation of Petroleum Suppliers (FPS)
	Federation of Small Businesses (FSB)
	Ffos Las Racecourse
	Fjord Horse
	Focus on Labour Exploitation (FLEX)
	Forest Research
	Freelancer & Contractor Services Association (FCSA)
	Freightliner
	Friends of the Earth Cymru
	Fuel Experts Association
	Future Farmers of Wales
G	Gofal Cymru
	Guide Dogs Cymru
H	Horticulture Wales
	HSBC Agriculture
	Humanists UK
	Hybu Cig Cymru
I	Institute of Biological, Environmental & Rural Sciences – Aberystwyth Uni (IBERS)
	Institute of Chartered Foresters
	Institute of Occupational Safety & Health (IOSH)

	Institution of Civil Engineers (ICE)
J	The Jewish Leadership Council
	The Joseph Rowntree Foundation (JRF)
K	Keep Wales Tidy
L	Labour Research Department
	LANDEX (Land Based Colleges Aspiring to Excellence)
	Landscape Institute
	LANTRA
	LEAF Education
	Learning Disability Coalition
	Learning Disability Wales
	Leonard Cheshire Trust
	Llais y Goedwig
	Llanishen Reservoir Action Group
	Lloyds Bank plc (Agriculture)
	Low Pay Commission
	Lusitano Breed Society of Great Britain
M	Maelor Forest Nurseries Ltd
	Marine Conservation Society
	MEIC
	Mencap Cymru
	Menter a Business
	Menter Mon
	Mentrau Iaith Cymru
	Merched y Wawr
	Meyrick Estate Management Ltd (Bordogan Estate)
	Mid & West Wales Fire and Rescue Service
	MIND Cymru
	Mineral Products Association
	Mudiad Meithrin
	Multiple Sclerosis (MS) Society Wales
	Muslim Council of Wales
N	National Allotment Society
	National Autistic Society Cymru
	National Beef Association (NBA)
	National Deaf Childrens Society Cymru
	National Energy Action Wales (NEA Cymru)
	National Farmers Union (NFU Cymru)
	National Federation of Women's Institutes (NFWI Wales)
	National Hate Crime Report and Support Centre Wales
	National Parks Wales
	National Sewerage Association
	National Trust
	National Youth Agency

	Nationwide Access Consultants Limited
	Natural Resources Wales (NRW)
	Network She
	NFU Mutual
	NHS Centre for Equality & Human Rights
	North Wales Regional Equality Network (NWREN)
	NPTC Group
	NSPCC Wales
O	Office of the Secretary of State for Wales
	OFTEC
	OHES Environmental
	Oil Facilities Limited (OFL)
	Oil Recycling Association
	Older People's Commissioner for Wales
	Oxfam Cymru
P	Participation Cymru
	Pembrokeshire Coast National Park
	Planning Inspectorate (PINS)
	Powys County Council
	Prime Cymru
	Prince's Trust Cymru
	Public Health Wales
R	R.A.B.I Wales / Cymru
	Race Council Cymru
	Race Equality First
	Ramblers
	Recruitment & Employment Confederation (REC)
	Red Ruby Devon Cattle Society
	Regional Community Cohesion Coordinators
	Resolution Foundation
	RH & S Mottershead
	RICS Wales
	Royal National Institute of Blind People (RNIB)
	Royal Society for the Protection of Birds (RSPB)
	Royal Town Planning Institute (RTPI)
	Royal Welsh Agricultural Society (RWAS)
S	Santander (Agriculture)
	Save the Children Wales
	Scope
	Scottish Government
	Severn Rivers Trust
	SEWREC – The Social Justice Charity for South East Wales
	Shaw Trust
	Shelter Cymru
	SNAP Cymru
	Snowdonia National Park

	South East Wales Equality Network (SEWEN)
	SOVA
	Sparkle
	Stonewall Cymru
	Sustainable Farming Consultancy
	Swansea Disability Forum
T	T'ai Pawb
	TCS Management
	Tenant Farmers Association (TFA)
	Tir Enterprises Ltd
	Travelling Ahead
	Tros Gynnal Plant
U	UK Youth
	Unique Transgender Network
	UNISON
	United Utilities
	Unite the Union
	University of Bangor
	Urdd Gobaith Cymru
V	Victim Support Cymru
	Visit Wales
W	Wales Assembly of Women
	Wales Council for Deaf People
	Wales Council for Voluntary Action (WCVA)
	Wales Council of the Blind
	Wales Environment Link
	Wales Federation of Young Farmers Clubs (YFC Wales) (+ 12 counties)
	Wales Tourism Alliance
	Wales TUC Cymru
	Water Regulations Advisory Service (WRAS)
	Water UK
	Watts and Morgan
	Wellness Recovery Action Plan (WRAP)
	Welsh Black Cattle Society
	Welsh Lamb & Beef Producers (WLBP)
	Welsh Language Commissioner
	Welsh Lavender Ltd
	Welsh Local Government Association (WLGA)
	Welsh Refugee Council
	Welsh Women's Aid
	West Wales Rivers Trust
	Whittingham Riddell
	Whizz Kids
	Wildfowl & Wetlands Trust (WWT)
	Wildlife Trust of South and West Wales

	Wildlife Trusts Wales
	WISE
	Women Connect First
	Women in Agriculture Network
	Women in Property
	Women in Rural Enterprise (WiRE)
	Women in Wales
	Women on Boards
	Women's Engineering Society (WES)
	Women's Equality Network (WEN Wales)
	Women's Farm and Garden Association (WFGA)
	Woodland Trust
	WWF Cymru
	Wye & Usk Foundation
Y	Young Wales
	Youth United Foundation



Ein cyf/Our ref MA/L/LG/0276/20

Elin Jones AM
Presiding Officer
National Assembly for Wales

30 March 2020

The Agricultural Wages (Wales) Order 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument (SI) will come into force less than 21 days from the date of laying. The Explanatory Memorandum for this Order 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 support 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 2019 (2019 Order). The order came into force on 1 April 2019 and was the fourth wages order made under the 2014 Act.

The Panel agreed to increase the agricultural minimum wage rates and consulted on the proposals in the autumn of 2019. The Panel's intention was 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 will take effect.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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.

However, there was a two month delay in announcing the NMW/NLW as a result of the UK general election. The Panel reconvened to consider the proposed agricultural minimum wage rates in light of the announcement and subsequently submitted a revised Order.

In accordance with section 4(1)(b) of the 2014 Act, the revised Order was referred back to the Panel by Officials for further consideration of a number of minor technical drafting issues. The final draft Order was submitted by the Panel to Lesley Griffiths AM, Minister for Energy, Environment and Rural Affairs, for approval on 20 March 2020, much later than anticipated.

Until the Agricultural Wages (Wales) Order 2020 comes into force, agricultural workers in Wales will continue to be subject to the 2019 Order. To minimise disruption and ensure workers are paid in accordance with the AMW rates agreed by the Panel, it is proposed the Order will not adhere to the 21 day convention to enable it to come into force on 1 April.

Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances that have delayed the process. I also believe reducing any further delay in bringing uplifted agricultural wage rates into force is justified on the basis it will minimise the length of time agricultural workers covered by the AMW are disadvantaged in relation to their pay awards and make compliance easier for agricultural employers.

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

A copy of this letter has gone to Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.



Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Agenda Item 2.2

SI(5)538 - The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (Wales) Order 2020

Background and Purpose

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO").

Article 3 of, and Schedule 2 to, the GPDO confer permitted development rights in respect of certain development. Where such rights are conferred, an application for planning permission is not required.

Article 2 of this Order amends Schedule 2 to the GPDO. It inserts a new Part 3A (Temporary Buildings and Changes of Use for Public Health Emergency Purposes) to permit certain development in Wales for the purposes of preventing, controlling or mitigating the effects of, or taking other action in connection with a public health emergency in the United Kingdom.

The development permitted is the change of use of a building or land to Class C2 (Residential institutions) or Class D1 (Non-residential institutions) of the Town and Country Planning (Use Classes) Order 1987, and the provision of buildings or other structures.

The permitted development is subject to the conditions and limitations which are set out in Part 3A.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

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

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

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented.

The Order was laid on 14 April, having already come into force on 10 April. In this case, the Welsh Government considers that the circumstances justify a breach of the 21 day rule. We note the letter sent by Rebecca Evans, Minister for Finance and Trefnydd to the Llywydd, dated 14 April 2020. This states:

The Order is required to come into force as soon as possible to enable health service bodies to undertake development in accordance with Part 3A. This would enable for instance the setting up of



temporary hospitals and testing stations on land not owned/maintained by a local authority or the Crown, such as within private sports arenas.

If the Order does not come into force health service bodies will be required to apply for planning permission to carry out such development. The Order seeks to avoid the delay that the making and processing of such applications would inevitably involve. In view of the circumstances surrounding the COVID-19 disease which falls in the category of a “public health emergency” for the purposes of the Order and in particular its fast-moving nature, not adhering to the 21-day convention is thought necessary and justifiable in this case.

Implications arising from exiting the European Union

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

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

29 April 2020



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

2020 No. 420 (W. 90)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Town and Country Planning
(General Permitted Development)
(Amendment) (No. 2) (Wales)
Order 2020**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”).

Article 3 of, and Schedule 2 to, the GPDO confer permitted development rights in respect of certain development. Where such rights are conferred, an application for planning permission is not required.

Article 2 of this Order amends Schedule 2 to the GPDO by inserting a new Part 3A (Temporary Buildings and Changes of Use for Public Health Emergency Purposes) to permit certain development in Wales for the purposes of preventing, controlling or mitigating the effects of, or taking other action in connection with a public health emergency in the United Kingdom.

The development permitted is the change of use of a building or land to Class C2 (Residential institutions) or Class D1 (Non-residential institutions) of the Town and Country Planning (Use Classes) Order 1987, and the provision of buildings or other structures.

The permitted development is subject to conditions and limitations which are also set out in the new Part 3A.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

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

2020 No. 420 (W. 90)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Town and Country Planning
(General Permitted Development)
(Amendment) (No. 2) (Wales)
Order 2020**

Made 9 April 2020

Coming into force 10 April 2020

*Laid before the National Assembly for
Wales* 14 April 2020

The Welsh Ministers, in exercise of the powers conferred by sections 59, 60(1), 61(1) and 333(7) of the Town and Country Planning Act 1990⁽¹⁾ and now vested in them⁽²⁾, make the following Order.

Title, commencement and application

1.—(1) The title of this Order is the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (Wales) Order 2020 and it comes into force on 10 April 2020.

(2) This Order applies in relation to Wales.

(1) 1990 c. 8. Section 59(4) was inserted by section 55 of, and paragraph 5 of Schedule 7 to, the Planning (Wales) Act 2015 (anaw 4). There are other amendments which are not relevant to this instrument.

(2) The functions of the Secretary of State under sections 59, 60(1), 61(1) and 333(7) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672): see the entry in Schedule 1 for the Town and Country Planning Act 1990 as substituted by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). By virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32) the functions of the National Assembly for Wales were transferred to the Welsh Ministers.

**Amendment of the Town and Country Planning
(General Permitted Development) Order 1995**

2.—(1) Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995⁽¹⁾ is amended as set out in paragraph (2).

(2) After Part 3 (Changes of Use) insert—

“Part 3A

**Temporary Building and Changes of
Use for Public Health Emergency
Purposes**

Class A

A. Permitted development

Development for the purpose of preventing, controlling or mitigating the effects of, or taking other action in connection with a public health emergency in the United Kingdom, consisting of—

- (a) a change of the use of a building or land to a use falling within Class C2 (Residential institutions) or Class D1 (Non-residential institutions) of the Schedule to the Use Classes Order,
- (b) the provision on land of buildings, moveable structures, works, plant or machinery.

A.1 Development not permitted

Development is not permitted by Class A if—

- (a) any part of the development is on land which is, or forms part of—
 - (i) a military explosive storage area;
 - (ii) a safety hazard area;
 - (iii) a site of special scientific interest;or
- (b) the land or building is, or contains, a scheduled monument.

A.2 Conditions

Development is permitted by Class A subject to the following conditions—

- (a) the development must be undertaken by or on behalf of an NHS body;

(1) S.I. 1995/418 to which there are amendments which are not relevant to this instrument.

- (b) if the developer is not also the local planning authority, the developer must, as soon as reasonably practicable notify the local planning authority of that development; and
- (c) on or before the expiry of the period of twelve months beginning with the date on which the development began—
 - (i) any use of that building or land for the purpose of Class A must cease;
 - (ii) any building, moveable structure, works, plant or machinery permitted by Class A must be removed; and
 - (iii) the building or land must be restored to its condition before the development took place, or to such other state as may be agreed in writing between the local planning authority and the developer.

A.3 Interpretation of Class A

(1) For the purposes of Class A—

"military explosives storage area" means any area, including an aerodrome, depot, mooring or port, at which the storage of military explosives may be undertaken and for which the associated explosives safeguarding zone is identified on a safeguarding map, issued by the Secretary of State provided to the local planning authority for the purposes of a direction made by the Welsh Ministers in exercise of powers conferred by article 18(1) of the Procedure Order (or any previous powers to the like effect);

"NHS body" has the same meaning as in section 206 of the National Health Service (Wales) Act 2006(1);

"Procedure Order" means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(2);

"public health emergency" means an event or situation which threatens serious damage to human welfare in a place in the United Kingdom;

(1) 2006 c.42, section 206 was amended by paragraphs 38(1)(a), (b) and (d) of Schedule 21 to the Health and Social Care Act 2012 c. 7. There are other amendments which are not relevant to this instrument

(2) S.I. 2012/801 (W. 110) to which there are amendments which are not relevant to this instrument

“safety hazard area” means an area notified to the local planning authority—

- (a) by the Health and Safety Executive for the purposes of paragraph (c) of the Table in Schedule 4 to the Procedure Order (or any previous powers to the like effect); or
- (b) by the Office for Nuclear Regulation for the purposes of paragraph (d) of that Table.

(2) For the purposes of the definition of “public health emergency” in paragraph (1), an event or situation threatens damage to human welfare only if it involves, causes or may cause—

- (a) loss of human life;
- (b) human illness or injury;
- (c) disruption of services relating to health.”

Julie James

Minister for Housing and Local Government, one of the Welsh Ministers

9 April 2020

Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2020

This Explanatory Memorandum has been prepared by the Planning Directorate 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 Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2020.

Julie James AM
Minister for Housing and Local Government

14 April 2020

PART 1

1. Description

- 1.1 The Town and Country Planning (General Permitted Development) Order 1995 (the “GPDO”), as amended, allows development to be undertaken, within certain parameters, without the need to submit a planning application. This is known as “permitted development”.
- 1.2 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2020 (“the Amendment Order”) amends Schedule 2 to the GPDO by:
 - Inserting a new Part 3A (Temporary Buildings and Changes of Use for Public Health Emergency Purposes) to permit certain development for the purposes of preventing, protecting against, controlling or providing a response to a public health emergency in the United Kingdom.

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

- 2.1 In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Order will come into force less than 21 days from the date of laying.
- 2.2 The Order seeks to avoid the delay that the making and processing of planning applications would inevitably involve. In view of the circumstances surrounding COVID-19, which falls in the category of a “public health emergency” for the purposes of the Order, and in particular its fast-moving nature, not adhering to the 21-day convention is thought necessary and justifiable in this case.

3. Legislative background

- 3.1 The powers to make the Amendment Order are in sections 59, 60(1), 61(1) and 333(7) of the Town and Country Planning Act 1990. These sections give the Secretary of State power to grant (or to enable local planning authorities to grant) planning permission for categories of development specified in a development order. The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) so far as exercisable in relation to Wales. Those functions were 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), the functions being relevant Assembly functions as defined in paragraph 30(2).

- 3.2 Section 333(5B) of the Town and Country Planning Act 1990 provides that the procedure for a statutory instrument which contains a development order made by the Welsh Ministers is a negative resolution procedure.

4. Purpose and intended effect of the legislation

Emergency Development by a NHS body

- 4.1 During a public health emergency, there is often a need for the NHS to respond rapidly to changing situations in the interests of preventing, mediating or easing a human health crisis. It is accepted that during such time the usual regulatory requirements may need to be relaxed to ease pressure on the NHS and enable health service bodies to respond and provide facilities to limit its spread, treat, test, care for and manage the recovery of an extremely high number of patients.
- 4.2 It is the responsibility of those who undertake development to ensure their actions are lawful. With this in mind, the purpose of the provisions in the Amendment Order, introducing a new Part 3A (Temporary Buildings and Changes of Use for Public Health Purpose) to permit certain development for the purposes of preventing, protecting against, controlling or providing a response to a public health emergency in the United Kingdom.
- 4.3 The development permitted is the change of use of a building or land from any class in the Schedule to the Use Classes Order or any other use to Class C2 (Residential institutions) or Class D1 (Non-residential institutions), and the provision of buildings or other structures.
- 4.4 For the purpose of Part 3A, a public health emergency is an event or situation which causes or may loss of human life, serious human illness or injury; or serious disruption of services relating to health.
- 4.5 Development is not permitted under Part 3A if any part of the development is on land which is, or forms part of a military explosive storage area, a safety hazard area or a site of special scientific interest. Development is also not permitted if the land or building is, or contains, a scheduled monument.
- 4.6 The permitted development is subject to conditions which are also set out in the new Part 3A at paragraph A.2. Those conditions are:
- The development must be undertaken by or on behalf of an NHS body;
 - That if the developer is not also the Local Planning Authority (LPA) that the developer notify the LPA of the development;
 - That the developer must stop using the land for the emergency purpose on or before the expiry of a period of 12 months from when it started.

- Any structures and plant etc. must be removed and the building and/or land must be restored to its previous condition (or to an agreed condition) on or before the expiry of a period of 12 months from when the development started. Alternatively, planning permission would have to be sought for any continuing use.

4.7 For the purposes of the legislation, an “NHS body” is defined in paragraph A.3.

4.8 The Order seeks to avoid the delay that the making and processing of planning applications would inevitably involve, thereby enabling a quicker response to the emergency.

5. Consultation

5.1 Due to the emergency nature of this Order the Welsh Government did not undertake a consultation before the Order came into force. The permitted development rights granted by this Order are urgently required by the NHS to respond to the current Coronavirus (COVID-19) epidemic.

5.2 The views of stakeholders will be sought retrospectively as part of a future consultation on wider changes to the GPDO. Any feedback will be used to inform any future changes to the Order.

6. Regulatory Impact Assessment (RIA)

6.1 These Regulations need to be put in place quickly to deal with an emergency situation. As such, no RIA has been completed. This is in line with the Welsh Ministers’ regulatory impact assessment code for subordinate legislation.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Elin Jones AC/AM
Llywydd
Cynulliad Cenedlaethol Cymru
Bae Caerdydd
Caerdydd
CF99 1SN

14 April 2020

Dear Elin,

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2020 (“the Order”)

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument has come into force less than 21 days from the date of laying. The explanatory memorandum that accompanies the Order is attached for your information.

Background

The Order inserts a new Part 3A in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (“the principal Order”). Where development falls within the terms of the principal Order, the principal Order provides planning permission for it so that an application for planning permission is not required.

The aim of the Order is to enable health service bodies to carry out certain development for the purposes of preventing, protecting against, controlling or providing a response to a public health emergency in the United Kingdom. The development permitted is the change of use of a building or land from any class in the Schedule to the Town and Country Planning (Use Classes) Order 1987 or any other use to Class C2 (Residential institutions) or Class D1 (Non-residential institutions), and the provision of buildings or other structures.

For the purpose of the new Part 3A, a public health emergency is an event or situation which causes or may cause loss of human life, serious human illness or injury; or serious disruption of services relating to health.

The permitted development is subject to conditions which are also set out in the new Part 3A. They include a condition that the developer who has undertaken the development must



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stop using the land/buildings for the emergency purpose on or before the expiry of a period of 12 months from when it started, structures and plant etc must be removed and the land/building must be restored to its previous condition/use (or to an agreed condition).

The Order is required to come into force as soon as possible to enable health service bodies to undertake development in accordance with Part 3A. This would enable for instance the setting up of temporary hospitals and testing stations on land not owned/maintained by a local authority or the Crown, such as within private sports arenas.

If the Order does not come into force health service bodies will be required to apply for planning permission to carry out such development. The Order seeks to avoid the delay that the making and processing of such applications would inevitably involve. In view of the circumstances surrounding the COVID-19 disease which falls in the category of a "public health emergency" for the purposes of the Order and in particular its fast-moving nature, not adhering to the 21-day convention is thought necessary and justifiable in this case.

Due to the immediacy of the Order it has not been subject to consultation, however, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,



Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)539 – The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020

Background and Purpose

These Regulations make provision in relation to local authority meetings, and the publication of and access to certain local authority documents during the COVID-19 pandemic.

For the purposes of these Regulations “local authority” includes principal and community councils, an executive of a principal council, a port health authority, National Park Authorities and Fire and Rescue Authorities. It also includes committees, sub-committees and joint committees of two or more of these bodies.

Part 2 of these Regulations makes provision to enable meetings of local authorities held before 1 May 2021 to be held by means of remote attendance.

Part 3 makes provision about requirements relating to local authority meetings. Regulations 6 to 8 make provision about when annual meetings of principal councils, community councils and National Park authorities may be held in 2020. Regulation 9 makes provision ensuring a local authority is not restricted in determining when meetings (other than the annual meetings addressed by regulations 6 to 8) may be held before 1 May 2021. Regulation 10 makes provision about failures to attend meetings. Regulations 11 to 13 make provision about elections of chairs, vice-chairs and deputy chairs (as the case may be) at the 2020 annual meetings of principal councils, community councils, National Park authorities and the Swansea Bay Port Health Authority. Regulation 14 makes provision in relation to other appointments which are made at local authority meetings held before 1 May 2021. Regulation 15 enables the standing orders of a local planning authority to provide for the substitution of members of local planning authority committees and sub-committees. Regulation 16 makes provision about the manner of voting at community council meetings. Regulations 17 and 18 make provision about notices of meetings of principal councils, community councils and National Park authorities held before 1 May 2021, and summonses to members to attend those meetings.

Part 4 makes modifications to public access requirements in relation to certain local authority meetings, decisions of principal council executives, and notices and documents relating to those meetings or decisions. Regulation 20 modifies provisions of the Public Bodies (Admission to Meetings) Act 1960 (c. 67) and regulation 21 modifies provisions of Part 5A of the Local Government Act 1972 (c. 70). Those provisions relate to public access to meetings and to notices and documents relating to meetings. Regulation 22 makes provision about the preparation of the minutes of a meeting under Schedule 12 to the Local Government Act 1972. Regulation 23 modifies provisions of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (S.I. 2001/2290) (W. 178) in relation to public access to meetings of executives of principal councils and to notices and documents relating to those meetings and to executive decisions.

Procedure

Negative.



Technical Scrutiny

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

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

1. Regulation 21(4) substitutes text for section 100C of the Local Government Act 1972. In subsection 6(b) of that substituted text the cross reference to subsection (2) appears to be incorrect. We believe it should refer to subsection (9).
2. Regulation 23(8)(f)(i) includes a reference to regulation 24(6) of these Regulations. We believe the reference should be to regulation 23(6). There is no regulation 24(6).

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

1. The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented. However, in this case, the Welsh Government consider that the circumstances justify a breach of that rule. The Minister for Finance and Trefnydd, as required under section 11A of the Statutory Instruments Act 1946, has notified the Llywydd of the breach in a letter dated 21 April 2020 so that the matter can be brought to the attention of Members.

The letter notes that in view of the circumstances surrounding the COVID-19 pandemic, not adhering to the 21 day convention is thought necessary and justifiable in this case. The letter explains that the Regulations were required to come into force on 22 April 2020 to enable local authorities to continue to function. Local authorities are not able to make these changes by amendments to their own standing orders or other local rules as requirements for meetings are generally set out in detail in primary and secondary legislation. Without the changes set out in the Regulations, local authorities are unable to hold any meetings safely. This is preventing them from their vital efforts to respond to the COVID-19 pandemic. These arrangements will remain in place for meetings held before 1st May 2021.

2. It is noted in the Explanatory Memorandum, and in the letter referred to above, that due to the immediacy of the Regulations, they have not been subject to consultation, however, the Welsh Government has been in regular contact with the UK Government and with bodies representing local government in Wales.

Implications arising from exiting the European Union

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



Government Response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable in relation to the technical reporting points raised.

Legal Advisers

Legislation, Justice and Constitution Committee

29 April 2020



Cynulliad Cenedlaethol Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
National Assembly for Wales

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Legislation, Justice and Constitution Committee

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

2020 No. 442 (W. 100)

**LOCAL GOVERNMENT,
WALES**

**The Local Authorities
(Coronavirus) (Meetings) (Wales)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to local authority meetings, and the publication of and access to certain local authority documents.

Part 1 sets out preliminary matters and defines terms used in these Regulations, including the definition of “local authority” for the purposes of these Regulations. Regulation 3 makes provision about the interaction of these Regulations with standing orders, executive arrangements and any other rules of a local authority. Regulation 4 makes provision about how an authority with its own website must comply with requirements in these Regulations to publish notices or documents electronically.

Part 2 makes provision to enable meetings of local authorities held before 1 May 2021 to be held by means of remote attendance.

Part 3 makes provision about requirements relating to local authority meetings. Regulations 6 to 8 make provision about when annual meetings of principal councils, community councils and National Park authorities may be held in 2020. Regulation 9 makes provision ensuring a local authority is not restricted in determining when meetings (other than the annual meetings addressed by regulations 6 to 8) may be held before 1 May 2021. Regulation 10 makes provision about failures to attend meetings. Regulations 11 to 13 make provision about elections of chairs, vice-chairs and deputy chairs (as the case may be) at the 2020 annual meetings of principal councils, community councils, National Park authorities and the Swansea Bay Port Health Authority. Regulation 14 makes provision in relation to other appointments which are

made at local authority meetings held before 1 May 2021. Regulation 15 enables the standing orders of a local planning authority to provide for the substitution of members of local planning authority committees and sub-committees. Regulation 16 makes provision about the manner of voting at community council meetings. Regulations 17 and 18 make provision about notices of meetings of principal councils, community councils and National Park authorities held before 1 May 2021, and summonses to members to attend those meetings.

Part 4 makes modifications to public access requirements in relation to certain local authority meetings, decisions of principal council executives, and notices and documents relating to those meetings or decisions. Regulation 20 modifies provisions of the Public Bodies (Admission to Meetings) Act 1960 (c. 67) and regulation 21 modifies provisions of Part 5A of the Local Government Act 1972 (c. 70). Those provisions relate to public access to meetings and to notices and documents relating to meetings. Regulation 22 makes provision about the preparation of the minutes of a meeting under Schedule 12 to the Local Government Act 1972. Regulation 23 modifies provisions of the Local Authorities (Executive Arrangements) (Decision, Documents and Meetings) (Wales) Regulations 2001 (S.I. 2001/2290) (W. 178) in relation to public access to meetings of executives of principal councils and to notices and documents relating to those meetings and to executive decisions.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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

2020 No. 442 (W. 100)

**LOCAL GOVERNMENT,
WALES**

**The Local Authorities
(Coronavirus) (Meetings) (Wales)
Regulations 2020**

Made at 10:00 a.m. on 21 April 2020

*Laid before the National Assembly for
Wales at 5:30 p.m. on 21 April 2020*

Coming into force 22 April 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 78 of the Coronavirus Act 2020⁽¹⁾, sections 20 and 190 of the Local Government and Housing Act 1989⁽²⁾, and sections 22⁽³⁾ and 105 of the Local Government Act 2000⁽⁴⁾.

PART 1

General

Title, extent and application, and commencement

1.—(1) The title of these Regulations is the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

(2) These Regulations—

-
- (1) 2020 c. 7.
(2) 1989 c. 42. Functions of the Secretary of State under sections 20 and 190 of the 1989 Act, so far exercisable in relation to Wales transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
(3) Paragraph 28 of Schedule 3 to the Localism Act 2011 (c. 20) substituted the words “Welsh Ministers” for “National Assembly for Wales” in section 22.
(4) 2000 c. 22.

- (a) extend to England and Wales;
- (b) apply in relation to Wales.

(3) These Regulations come into force on 22 April 2020.

Interpretation

2. In these Regulations—

“the 1972 Act” (“*Deddf 1972*”) means the Local Government Act 1972⁽¹⁾;

“enactment” (“*deddfiad*”) means an enactment to the extent it contains provision which would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly;

“local authority” (“*awdurdod lleol*”) means—

- (a) a principal council;
- (b) an executive of a principal council (within the meaning of Part 2 of the Local Government Act 2000);
- (c) a community council;
- (d) a joint board for an area in Wales, continued in being by virtue of section 263(1) of the 1972 Act;
- (e) a port health authority for a port health district in Wales, constituted under section 2 of the Public Health (Control of Disease) Act 1984⁽²⁾;
- (f) a fire and rescue authority for an area in Wales, constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004⁽³⁾ or a scheme to which section 4 of that Act applies;
- (g) a National Park authority;
- (h) a joint committee of two or more of the bodies mentioned in any of paragraphs (a) to (g);
- (i) a committee or sub-committee of any of the bodies mentioned in any of paragraphs (a) to (h);

“National Park authority” (“*awdurdod Parc Cenedlaethol*”) means a National Park authority for an area in Wales, established under section 63 of the Environment Act 1995⁽⁴⁾;

“principal council” (“*prif gyngor*”) means a council for a county or county borough in Wales.

(1) 1972 c. 70.

(2) 1984 c. 22.

(3) 2004 c. 21.

(4) 1995 c. 25.

Interaction with standing orders etc.

3.—(1) The provision made in these Regulations applies regardless of any provision contained in the standing orders, executive arrangements or any other rules of a local authority.

(2) To the extent that any provision in standing orders, executive arrangements or other rules of a local authority is incompatible with any provision in these Regulations, it has no effect while the provision in these Regulations has effect.

Publishing electronically

4. A requirement imposed by virtue of these Regulations to publish a notice or document electronically is, if the body on whom the requirement is imposed has its own website, a requirement to publish on that website.

PART 2

Remote attendance

Remote attendance

5.—(1) Section 4 of the Local Government (Wales) Measure 2011⁽¹⁾ (remote attendance at principal council meetings) does not have effect in relation to a meeting held before 1 May 2021.

(2) A meeting of a local authority held before that date may be held by means of any equipment or other facility which enables persons who are not in the same place to speak to and be heard by each other (whether or not the equipment or facility also enables those persons to see each other).

(3) A reference in any enactment or other instrument to—

- (a) the attendance or presence of a person at a local authority meeting includes, in relation to a meeting which is held by the means described in paragraph (2), attendance by the use of those means;
- (b) the place at which a meeting of a local authority is held is not to be read as limited to a single physical location.

(4) Nothing in this regulation limits a local authority's powers to make standing orders, executive arrangements or other rules about meetings held by the means described in paragraph (2).

(1) 2011 nawm 4. Section 4 was amended by section 59 of the Local Government (Democracy) (Wales) Act 2013 (anaw 4).

(5) A local authority must have regard to any guidance issued by the Welsh Ministers for the purposes of this regulation.

PART 3

Requirements relating to meetings

When certain annual meetings may be held

6.—(1) Paragraph (2) applies in relation to a principal council that has not held an annual meeting—

- (a) on or after 1 March 2020, and
- (b) before the coming into force of these Regulations.

(2) Schedule 12 to the 1972 Act (meetings and proceedings of local authorities) is to be read as if, in paragraph 1(2) (annual meetings of principal councils), before paragraph (b)(1) there were inserted—

“(ab) in 2020, on such day in 2020 as the proper officer of the council may fix;”.

7. Schedule 12 to the 1972 Act is to be read as if, in paragraph 23(2)(2) (annual meetings of community councils), after “take office,” there were inserted “in 2020, the annual meeting is to be held on such day in 2020 as the proper officer of the council may determine,”.

8. Paragraph 2 of Schedule 3 to the National Park Authorities (Wales) Order 1995(3) (annual meetings) is to be read as if—

- (a) after sub-paragraph (1), there were inserted—

“(1A) But in 2020, the annual meeting is to be on such day in that year, and at such hour, as is fixed by the chair of the Authority after consulting the proper officer of the Authority.”;
- (b) in sub-paragraph (2), at the beginning there were inserted “Other than in 2020,”.

Date and time of other meetings

9.—(1) A meeting which, by virtue of an enactment or other instrument, a local authority is required to hold before 1 May 2021 may be held on such day and at such time before 1 May 2021 as the local authority

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- (1) Paragraph 1(2)(b) was amended by section 1(6) of the Elections Act 2001 (c. 7).
 - (2) Paragraph 23(2) was amended by article 4 of the Elections Act 2001 (Supplemental Provisions) Order 2001 (S.I. 2001/1630).
 - (3) S.I. 1995/2803. There are amendments to Schedule 3 none of which are relevant.

may determine (whether or not it is subject to any other requirements as to when it must be held).

(2) In this regulation, “meeting” does not include an annual meeting of—

- (a) a principal council;
- (b) a community council;
- (c) a National Park authority.

Failure to attend meetings

10. Section 85(1) of the 1972 Act (vacation of office by failure to attend meetings) is to be read in relation to a local authority to which that section applies (by virtue of any enactment) as if—

- (a) in subsection (3B), for “(3C) and (3D)” there were substituted “(3C) to (3D)”;
- (b) after subsection (3C) there were inserted—

“(3CA) In relation to a member of a local authority in Wales, the period—

- (a) beginning with the day on which the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 come into force, and
- (b) ending with the first day after the day mentioned in paragraph (a) on which a meeting is held, attendance at which would be—
 - (i) attendance by the member at a meeting of the local authority for the purposes of subsection (1), or
 - (ii) if the member is a member of the executive of the local authority, attendance by the member at a meeting of the executive for the purposes of subsection (2A),

is to be disregarded.”;

- (c) in subsection (3D), in each of paragraphs (a) and (b) after “(3C)” there were inserted “or (as the case may be) (3CA)”.

Election of chairs and vice-chairs of principal councils and community councils at annual meetings

11.—(1) The 1972 Act is to be read subject to this regulation.

(2) Section 22(1) (chair) is to be read as if after “councillors” there were inserted “; but if there is no election of a chair at the annual meeting of the council

(1) Subsections (3B), (3C) and (3D) were inserted by section 31 of the Local Government (Wales) Measure 2011 (nawm 4).

in 2020, the person holding office as chair immediately before the annual meeting of the council in 2020 may continue to hold office.”

(3) Section 23 (election of chair) is to be read as if—

(a) in subsection (1), after “council” there were inserted “unless, in relation to the annual meeting held in 2020, the council decides not to hold an election of a chair at that meeting”;

(b) after subsection (1) there were inserted—

“(1A) A principal council that did not elect a chair at its annual meeting held in 2020 may hold an election of a chair at any time before the annual meeting held in 2021 (but not after 30 April 2021).”

(4) Section 24(2) (vice-chair) is to be read as if for “the election of a chairman at the next annual meeting of the council” there were substituted “the next election of a chair held other than under section 88”.

(5) Section 34 (community councils) is to be read as if—

(a) in subsection (1), after “councillors” there were inserted “; but if there is no election of a chair at the annual meeting of the council in 2020, the person holding office as chair immediately before the annual meeting of the council in 2020 may continue to hold office”;

(b) in subsection (2), after “subsection (3) below” there were inserted “; but the community council may decide not to hold an election of a chair at the annual meeting held in 2020”;

(c) after subsection (2) there were inserted—

“(2A) A community council that did not elect a chair at its annual meeting held in 2020 may hold an election of a chair at any time before 1 May 2021.”;

(d) in subsection (7), for “the election of a chairman at the next annual meeting of the council” there were substituted “the next election of a chair held other than under section 88”.

Election of chairs and deputy chairs of National Park authorities at annual meetings

12. Paragraph 5(2) of Schedule 7 to the Environment Act 1995⁽¹⁾ (National Park authorities) is to be read as if for “not exceeding one year” there were substituted “ending when the annual meeting of the authority which follows their election is held under paragraph 2(1) of Schedule 3 to the National Park Authorities (Wales) Order 1995 (S.I. 1995/2803)”.

(1) 1995 c. 25.

Election of chair of the joint board of Swansea Bay Port Health Authority at annual meeting

13. Article 5 of the Swansea Bay Port Health Authority Order 1991⁽¹⁾ is to be read as if—

- (a) in paragraph (1), after “amongst the members” there were inserted “unless, in relation to the annual meeting held in 2020, the board decides not to hold an election of a chair at that meeting; if there is no election at that meeting the person holding office as chair immediately before that meeting may hold office for more than one year”;
- (b) in paragraph (2), after “board” there were inserted “unless, in relation to the annual meeting held in 2020, the board decides not to hold an election of a chair at that meeting”.

Other appointments and elections required to take place at meetings

14.—(1) In this regulation—

“relevant meeting” (“*cyfarfod perthnasol*”) means a meeting of a local authority to be held before 1 May 2021;

“relevant office” (“*swydd berthnasol*”) means an office to which a person is appointed or elected at a relevant meeting, other than the offices of—

- (a) chair and vice-chair of a principal council;
- (b) chair and vice-chair of a community council;
- (c) chair and deputy chair of a National Park authority;
- (d) chair of Swansea Bay Port Health Authority.

(2) Any requirement imposed by any enactment or other instrument to appoint or elect a person to a relevant office at a relevant meeting, other than a requirement to fill a vacancy in that office, is to be treated as a power to appoint or elect a person to that office at any relevant meeting.

(3) The term of office of a person holding a relevant office immediately before these Regulations come into force continues until immediately before that person’s successor assumes office, despite any provision to the contrary in any enactment or other instrument, other than provision relating to vacating office before the end of the term of office.

(1) S.I. 1991/1773.

Substitute members of local planning authority committees

15. Until the end of 30 April 2021, the Local Authorities (Standing Orders) (Wales) Regulations 2006⁽¹⁾ are to be read as if—

- (a) in regulation 4A, paragraph (3)(b) were omitted;
- (b) in Schedule 2A⁽²⁾, paragraph 2 (standing order relating to local planning authorities) were omitted.

Voting at community council meetings

16. Paragraph 29 of Schedule 12 to the 1972 Act (voting at community council meetings) has effect in relation to a meeting held before 1 May 2021 as if for sub-paragraph (1) there were substituted—

“(1) The manner of voting at meetings of a community council is to be decided by the council, but (if a vote is necessary on that question) the proper officer is to determine the manner of voting on that decision; if agreement cannot be reached, the proper officer is to determine the manner of voting on all other matters.”

Notices and summonses

17.—(1) Paragraph 4 of Schedule 12 to the 1972 Act (meetings of principal councils) has effect in relation to a meeting held before 1 May 2021 as if—

- (a) in sub-paragraph (2)—
 - (i) in paragraph (a), for “and place of the intended meeting shall be published at the council’s offices”, there were substituted “of the meeting and, if the meeting is to be open to the public, how to access the meeting, must be published electronically”;
 - (ii) in paragraph (a), for “be signed by those members” there were substituted “set out the names of those members”;
 - (iii) in paragraph (b), for “signed by the proper officer of the council” there were substituted “authenticated by the proper officer of the council in such manner as the proper officer considers appropriate”;
 - (iv) for the words from “shall” to the end of paragraph (b) there were substituted

⁽¹⁾ S.I. 2006/1275 (W. 121).

⁽²⁾ Schedule 2A was inserted by regulation 2(4) of the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017 (S.I. 2017/460 (W. 98)).

“must be sent to every member of the council by—

- (a) sending it by post to the member’s place of residence, or
- (b) sending it electronically.”;

(b) sub-paragraph (3) were omitted.

(2) Paragraph 26(2)(1) of Schedule 12 (meetings of community councils) has effect in relation to a meeting held before 1 May 2021 as if—

(a) in paragraph (a)—

- (i) for “and place of the intended meeting shall be published electronically and fixed in some conspicuous place in the community”, there were substituted “of the meeting and, if the meeting is to be open to the public, how to access the meeting, must be published electronically”;
- (ii) for “be signed by those members” there were substituted “set out the names of those members”;

(b) in paragraph (b)—

- (i) for “signed by the proper officer of the council” there were substituted “authenticated by the proper officer of the council in such manner as the proper officer considers appropriate”;
- (ii) for the words from “shall” to the end of that paragraph there were substituted “must be sent to every member of the council by—
 - (a) sending it by post to the member’s place of residence, or
 - (b) sending it electronically.”

18. Paragraph 6 of Schedule 3 to the National Park Authorities (Wales) Order 1995 (calling of meetings) has effect in relation to a meeting held before 1 May 2021 as if—

(a) in sub-paragraph (2)(a)—

- (i) for “and place of the intended meeting shall be published at the principal offices of the Authority”, there were substituted “of the meeting and, if the meeting is to be open to the public, how to access the meeting, must be published electronically”;

(1) Paragraph 26(2) was amended by section 57 of the Local Government (Democracy) (Wales) Act 2013 (anaw 4).

- (ii) for “be signed by those members” there were substituted “set out the names of those members”;
- (b) in sub-paragraph (2)(b)(1)—
 - (i) for “signed by the proper officer of the Authority shall, subject to sub-paragraph (3) below, be left at or” there were substituted “authenticated by the proper officer of the Authority in such manner as the proper officer considers appropriate, must be”;
 - (ii) “usual” were omitted;
 - (iii) after “member of the Authority” there were inserted “or sent electronically to every member of the Authority,”;
- (c) sub-paragraph (3) were omitted.

PART 4

Modification of public access requirements

Access to meetings of certain local authorities and related documents

19. This Part of these Regulations, other than regulation 22, ceases to have effect at the end of 30 April 2021.

20.—(1) Section 1 of the Public Bodies (Admission to Meetings) Act 1960⁽²⁾ has effect in relation to a meeting of a local authority to which that Act applies (by virtue of any enactment) held before the end of 30 April 2021 as if—

- (a) subsection (1)⁽³⁾ were omitted;
- (b) in subsection (2)—
 - (i) for “A body may, by resolution, exclude the public from a meeting” there were substituted “Where a meeting is open to the public, a body may, by resolution exclude the public from the meeting”;
 - (ii) the words from “and where such a resolution” to the end were omitted;
- (c) in subsection (4)—
 - (i) for the words before paragraph (a) there were substituted “The following

(1) Paragraph 6(2)(b) was amended by paragraph 52 of Schedule 4 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).

(2) 1960 c. 67.

(3) Subsection (1) was amended by section 3 of, and Schedule 2 to, the Local Government (Access to Information) Act 1985 (c. 43).

provisions apply in relation to a meeting of a body—”;

(ii) for paragraphs (a) and (b) there were substituted—

“(a) public notice of the time of the meeting and, if the meeting is to be open to the public, how to access the meeting, must be given by publishing it electronically at least three clear days before the meeting or, if the meeting is convened at shorter notice, then as soon as reasonably practicable;

(b) the agenda for the meeting as supplied to members of the body must also be published electronically in advance of the meeting (but excluding, if thought fit, any relevant item), together with such further statements or particulars, if any, as are necessary to indicate the nature of the items included or, if thought fit in the case of any item, any reports or other documents supplied to members of the body in connection with the item;”;

(iii) in paragraph (c), the words from “and duly accredited” to the end were omitted;

(d) before subsection (5) there were inserted—

“(4B) In subsection (4), “relevant item” means—

(a) where a meeting or part of a meeting is not likely to be open to the public by virtue of section 1(2), an item that would be considered while the meeting is not open to the public;

(b) where a meeting is not to be open to the public other than by virtue of section 1(2), an item which, in the opinion of the proper officer, would have been likely, had section 1(1) applied, to have been considered while the meeting was not open to the public by virtue of section 1(2).”;

(e) in subsection (5), for the words from the beginning to “publication thereby” there were substituted “Where a document is published under subsection (4), the publication thereby”;

(f) subsection (7) were omitted.

(2) Section 100 of the 1972 Act (committee meetings) has effect in relation to a meeting of a local authority to which that section applies (by virtue of any enactment) held before the end of 30 April 2021 as if—

(a) for subsection (1) there were substituted—

“(1) The Public Bodies (Admission to Meetings) Act 1960 (“the 1960 Act”) has effect in relation to meetings of committees of local authorities, subject to subsection (2).”;

(b) subsection (3) were omitted.

21.—(1) Part 5A(1) of the 1972 Act has effect as set out in this regulation in relation to a meeting of a local authority to which that Part applies (by virtue of any enactment), held before the end of 30 April 2021.

(2) Section 100A is to be read as if—

(a) subsection (1) were omitted;

(b) in each of subsections (2) and (4), at the beginning there were inserted “Where a meeting is open to the public,”;

(c) in subsection (5) for “this section does not require the meeting to be open” there were substituted “the meeting is not to be open”;

(d) in subsection (6)—

(i) for paragraph (a) there were substituted—

“(a) public notice of the time of the meeting and, if the meeting is to be open to the public, how to access the meeting, must be given by publishing it electronically at least three clear days before the meeting or, if the meeting is convened at shorter notice, then as soon as reasonably practicable;”;

(ii) paragraph (c) were omitted.

(3) Section 100B is to be read as if—

(a) in subsection (1), for “open to inspection by members of the public at the offices of the council” there were substituted “published electronically”;

(b) in subsection (2), for “items during which, in his opinion, the meeting is likely not to be open to the public” there were substituted “—

(a) if the meeting is to be open to the public, items during which, in the proper officer’s opinion, the meeting is likely not to be open to the public by virtue of section 100A(2) or (4), or

(b) if the meeting is not to be open to the public other than by virtue of section 100A(2) or (4), items during which, in the proper officer’s opinion, it is likely the meeting would not have been open to the public by virtue of section

(1) Part 5A was inserted by section 1 of the Local Government (Access to Information) Act 1985 (c. 43).

100A(2) or (4), had section 100A(1) applied.”;

- (c) in subsection (3)—
 - (i) for “open to inspection” there were substituted “published electronically”;
 - (ii) for “so open” there were substituted “so published”;
 - (iii) in paragraph (a), for “open to inspection from the time the meeting is convened” there were substituted “published electronically as soon as reasonably practicable”;
 - (iv) for paragraph (b) there were substituted—
 - “(b) where an item is added to an agenda which has been published electronically, the item (or the revised agenda), and any report for the meeting relating to the item, must be published electronically when the item is added to the agenda;”;
 - (v) for “open to inspection by the public” there were substituted “published electronically”;
- (d) in subsection (4)(a)—
 - (i) for “open to inspection by members of the public in pursuance of subsection (1) above for” there were substituted “published electronically in pursuance of subsection (1) above”;
 - (ii) for “from the time the meeting is convened” there were substituted “as soon as reasonably practicable”;
- (e) in subsection (5)—
 - (i) for “open to inspection by the public” there were substituted “published electronically”;
 - (ii) in paragraph (b), after “are likely” there were inserted “, or would be likely, by virtue of section 100A(4)”;
- (f) subsections (6) to (8) were omitted.

(4) Part 5A is to be read as if, for section 100C, there were substituted—

“100C Inspection of minutes and other documents after meetings

(1) Subsections (2) and (3) apply in relation to a meeting of a principal council held before the coming into force of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

(2) Until the expiration of the period of six years beginning with the date of a meeting of a principal council to which this subsection applies, a copy of the following documents must, so far as reasonably practicable, be supplied on request to a member of the public—

- (a) the minutes of the meeting, excluding so much of the minutes of proceedings during which the meeting was not open to the public as discloses exempt information,
- (b) where applicable, a summary under subsection (2) of this section as it had effect immediately before the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 came into force,
- (c) the agenda for the meeting, and
- (d) so much of any report for the meeting as relates to any item during which the meeting was open to the public.

(3) A principal council may charge a reasonable fee for providing a document under subsection (2).

(4) Subsections (5) to (9) apply in relation to a meeting of a principal council held after the coming into force of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

(5) As soon as reasonably practicable after a meeting of a principal council to which this subsection applies, and in any event before the end of the period of five working days beginning with the day on which the meeting is held, the council must publish electronically a note setting out—

- (a) the names of the members who attended the meeting, and any apologies for absence;
- (b) any declarations of interests;
- (c) any decisions taken at the meeting, including the outcomes of any votes, but excluding anything relating to a decision taken when the meeting was not open to the public as discloses exempt information.

(6) The following documents are to be published electronically as soon as reasonably practicable after a meeting of a principal council to which this subsection applies—

- (a) the minutes of the meeting, excluding so much of the minutes of proceedings during which the meeting was not open

to the public as discloses exempt information;

- (b) where applicable, a summary under subsection (2) below;
- (c) the final agenda for the meeting (if not already published electronically under section 100B);
- (d) so much of any report for the meeting as does not relate to an item during which the meeting was not open to the public (if not already published electronically under section 100B).

(7) Anything published electronically under this section or section 100B must remain accessible electronically by members of the public.

(8) In subsections (5)(c) and (6)(a) and (d), references to a period when, or during which, a meeting was not open to the public are, if the meeting was not open to the public other than by virtue of section 100A(2) or (4), references to a period when, or during which, in the proper officer's opinion, it is likely the meeting would not have been open to the public by virtue of section 100A(2) or (4), had section 100A(1) applied.

(9) Where, in consequence of the exclusion of parts of the minutes which disclose exempt information, a document to be published under subsection (6)(a) does not provide members of the public with a reasonably fair and coherent record of the whole or part of the proceedings, the proper officer must make a written summary of the proceedings or the part, as the case may be, which provides such a record without disclosing the exempt information."

(5) Part 5A is to be read as if section 100D were omitted; but the principal council must retain the background papers for a report for a meeting (within the meaning of that section) for a period of at least four years beginning with the date of the meeting to which they relate.

(6) In section 100E, subsection (2) is to be read as if—

- (a) for "100D" there were substituted "100C";
- (b) in paragraph (a), for the words from "given by posting it" to the end, there were substituted "published electronically on the website of every constituent council";
- (c) paragraphs (b) and (c) were omitted.

(7) Section 100F is to be read as if—

- (a) in subsection (1), for "be open to inspection by" there were substituted "so far as

reasonably practicable be supplied on request to”;

(b) for every other reference to “open to inspection” there were substituted “supplied”.

(8) Section 100H is to be read as if—

(a) in subsection (1), for the words from “any provision of this Part” to the end there were substituted “section 100G to be open to inspection is to be open to inspection at all reasonable hours and without payment”;

(b) in subsection (2), for “any provision of this Part” there were substituted “section 100G”;

(c) after subsection (3) there were inserted—

“(3A) Provisions in this Part which require the publication or supply of documents do not require or authorise the doing of any act which infringes the copyright in any work except that, where the owner of the copyright is a principal council, nothing done in pursuance of those provisions shall constitute an infringement of the copyright.”;

(d) subsection (4) were omitted;

(e) in subsection (5), for paragraphs (a) and (b) there were substituted “is published electronically or supplied to a member of the public in accordance with this Part.”;

(f) in subsection (6), paragraphs (b), (c) and (e) were omitted;

(g) in subsection (7), after “inspect” there were inserted “or otherwise access”.

(9) Section 100J(3) is to be read as if “, (cd), (d), (f)” were omitted.

22.—(1) Paragraph 41 of Schedule 12 to the 1972 Act is to be read, in relation to any local authority to which that paragraph applies (by virtue of any enactment), as if—

(a) in sub-paragraph (1), after “sub-paragraph (2)” there were inserted “or (2A)”;

(b) after sub-paragraph (2) there were inserted—

“(2A) Notwithstanding anything in any enactment or rule of law to the contrary, the minutes of the proceedings of a meeting of a local authority held after the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 come into force and before 1 May 2021 may be drawn up in a document, and that document must be authenticated by the person who presided at that meeting; and any minute purporting to be so authenticated must be received in evidence without further proof.”;

(c) in sub-paragraph (3), after “signed” there were inserted “or authenticated”.

(2) Paragraph 44(2) of Schedule 12 to the 1972 Act is to be read, in relation to any local authority to which that paragraph applies (by virtue of any enactment), as if after “signed” there were inserted “, or authenticated,”.

23.—(1) The Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001⁽¹⁾ (“the Regulations”) have effect in relation to a meeting held, or an executive decision taken, before the end of 30 April 2021 as set out in this regulation.

(2) The Regulations are to be read as if regulation 3 were omitted.

(3) Regulation 4 is to be read as if—

- (a) paragraph (1) were omitted;
- (b) in each of paragraphs (2) and (3), at the beginning there were inserted “Where a meeting is open to the public,”;
- (c) in paragraph (6)—
 - (i) in sub-paragraph (a), for “and place of the meeting” there were substituted “of the meeting and, if any part of the meeting is to be open to the public, how to access the meeting”;
 - (ii) in sub-paragraph (a)(i), for “posting it at the principal offices of the authority” there were substituted “publishing it on the website of the authority”;
 - (iii) in sub-paragraph (a)(ii), for “posting it at the principal offices of the authority at the time the meeting is convened” there were substituted “publishing it on the website of the authority as soon as reasonably practicable”;
 - (iv) in sub-paragraph (b), paragraph (ii) and the “and” which precedes it were omitted.

(4) Regulation 5 is to be read as if—

- (a) in paragraph (1), for “open to inspection by members of the public at the principal offices of the authority” there were substituted “published on the website of the authority”;
- (b) in paragraph (2), for “provided” there were substituted “published”;
- (c) in paragraph (2), for “items during which, in the proper officer’s opinion, the meeting is likely not to be open to the public” there were substituted “—

⁽¹⁾ S.I. 2001/2290 (W. 178).

- (a) if the meeting is to be open to the public, items during which, in the proper officer's opinion, the meeting is likely not to be open to the public by virtue of regulation 4(2) or (3), or
- (b) if the meeting is not to be open to the public other than by virtue of regulation 4(2) or (3), items during which, in the proper officer's opinion, it is likely the meeting would not be open to the public by virtue of regulation 4(2) or (3), had regulation 3 applied.”;
- (d) in paragraph (3)—
 - (i) for “paragraph (1) to be open to inspection” there were substituted “paragraph (1) to be published on the website of the authority”;
 - (ii) for “so open” there were substituted “so published”;
 - (iii) in sub-paragraph (a), for “from the time the meeting is convened” there were substituted “as soon as reasonably practicable”;
 - (iv) for sub-paragraph (b) there were substituted—
 - “(b) where an item is added to an agenda which has been published on the website of the authority, the item (or the revised agenda), and any report for the meeting relating to the item, must be published on the authority's website when the item is added to the agenda;”;
 - (v) for “open to inspection by the public” there were substituted “published on the website of the authority”;
- (e) in paragraph (4)(a)(1)—
 - (i) for “open to inspection by members of the public” there were substituted “published on the authority's website”;
 - (ii) in paragraph (i), “for” were omitted;
 - (iii) in paragraph (ii), for “from the time the meeting is convened” there were substituted “as soon as reasonably practicable”;
- (f) in paragraph (5)—

(1) Paragraph (4) was substituted by regulation 2(2) of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2002 (S.I. 2002/1385 (W. 135)).

- (i) for “open to inspection by the public” there were substituted “published on the authority’s website”;
- (ii) after “is likely” there were inserted “, or would be likely, by virtue of regulation 4(3)”;

(g) paragraphs (6) to (8) were omitted.

(5) The Regulations are to be read as if for regulation 8 there were substituted—

“Inspection of documents following executive decisions

8.—(1) Paragraphs (2), (3) and (6) apply in relation to meetings held, and executive decisions taken (whether or not at a meeting), before the coming into force of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

(2) After a meeting of a decision making body at which an executive decision has been made or after an individual member has made an executive decision the proper officer must ensure that a copy of—

- (a) any written statements prepared in accordance with regulation 6 or 7; and
- (b) any report considered at the meeting or, as the case may be, considered by the individual member which is relevant to a decision recorded in accordance with regulation 6 or 7 or, where only part of the report is relevant to such a decision, that part,

will, so far as reasonably practicable, be supplied on request to a member of the public.

(3) A principal council may charge a reasonable fee for providing a document under paragraph (2).

(4) Paragraphs (5) and (6) apply in relation to meetings held, and executive decisions taken (whether or not at a meeting), after the coming into force of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

(5) After a meeting of a decision making body at which an executive decision has been made or after an individual member has made an executive decision the proper officer must ensure that a copy of—

- (a) any written statements prepared in accordance with regulation 6 or 7; and
- (b) any report considered at the meeting or, as the case may be, considered by the

individual member which is relevant to a decision recorded in accordance with regulation 6 or 7 or, where only part of the report is relevant to such a decision, that part,

is published, as soon as is reasonably practicable, on the website of the relevant local authority.

(6) Nothing in this regulation shall be taken to authorise or require a proper officer to disclose exempt or confidential information.”

(6) The Regulations are to be read as if regulation 9 were omitted.

(7) Regulation 10 is to be read as if—

(a) in paragraph (1)—

(i) for “be open to inspection by” there were substituted “so far as reasonably practicable be supplied on request”;

(ii) “when the meeting concludes” were omitted;

(iii) for “immediately after” there were substituted “as soon as reasonably practicable after”;

(b) for “available for inspection”, in each place it occurs, there were substituted “supplied”.

(8) Regulation 13 is to be read as if—

(a) paragraphs (1) and (2) were omitted;

(b) in paragraph (3)—

(i) for “Paragraph (2) does not” there were substituted “Provisions in these Regulations which require the publication or supply of documents do not”;

(ii) for “that paragraph” there were substituted “those provisions”;

(c) in paragraph (4), for the words from “required by these Regulations to be open to inspection” to the end of sub-paragraph (b) there were substituted “is required by these Regulations to be published on an authority’s website or supplied to members of the public.”;

(d) in paragraph (5)—

(i) for “to be available for inspection by members of the public” there were inserted “to be supplied to members of the public on request”;

(ii) for “made available for inspection by the public” there were substituted “supplied on request”;

(e) after paragraph (5) there were inserted—

“(5A) Anything published electronically under regulation 8 must be retained by the local authority and must remain accessible electronically by members of the public.”;

(f) in paragraph (6)—

(i) after “Any background papers” there were inserted “that would, but for regulation 24(6) of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 be”;

(ii) “and be available for inspection by the public” were omitted.

(9) The Regulations are to be read as if regulation 14 were omitted.

Julie James

Minister for Housing and Local Government, one of the Welsh Ministers

At 10:00 a.m. on 21 April 2020

Explanatory Memorandum to the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Local Government 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 Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

Julie James AM
Minister for Housing and Local Government
30 April 2020

PART 1

1. Description

The Regulations make temporary provision in relation to local authority meetings and for public and press access to these meetings during the COVID-19 pandemic.

The measures employed to combat COVID-19 include social distancing, the avoidance of non-essential travel and the requirement to work from home where possible. Legislation currently places requirements on local authorities to meet in person in specified offices, to make many meetings open to the public and to enable the public to inspect documents related to the meetings, in some cases, in the offices of local authorities. This runs counter to the measures in place for COVID-19.

The Regulations provide flexibility to enable local authorities (including local authority executives) to operate safely, effectively and lawfully, while retaining the principles of openness and accountability to the public by, for example, enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publishing of certain documents.

Regulation 2 defines “local authority” for the purposes of the Regulations.

Local authorities are not able to make these changes by amendments to their own standing orders or other local rules as requirements for meetings are generally set out in detail in primary and secondary legislation.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

The Regulations make temporary provision for the conduct of local authority meetings and for public and press access to these meetings. In view of the circumstances surrounding the COVID-19 pandemic, the role of local authorities in responding to this emergency, and in particular its fast-moving nature, not adhering to the 21-day convention is thought necessary and justifiable in this case. Without the changes set out in these Regulations, the majority of local authorities concerned are unable to hold their meetings by remote attendance lawfully (or in the case of some, they cannot have all members attending remotely). This is preventing them from their vital efforts to deal with the crisis.

3. Legislative background

The Regulations are made under section 78 of the Coronavirus Act 2020, sections 20 and 190 of the Local Government and Housing Act 1989 and sections 22 and 105 of the Local Government Act 2000.

Section 78(1) of the Coronavirus Act 2020 Act enables the relevant national authority to make provision by regulations relating to local authority meetings. Pursuant to section 78(5) (b), “relevant national authority” means the Welsh Ministers in relation to local authorities in Wales. Section 78(4) enables the Welsh Ministers to disapply or modify any enactment or subordinate legislation and to make consequential and supplementary provision.

Section 20 of the Local Government and Housing Act 1989 enables the Secretary of State to make regulations to require relevant authorities to incorporate such provision as may be prescribed by the regulations in standing orders for regulating their proceedings and business and to make or refrain from making such other modifications of any such standing orders as may be so prescribed. Functions of the Secretary of State under sections 20 of the 1989 Act, so far exercisable in relation to Wales transferred to the National Assembly for Wales by virtue of article 2 and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Section 22 of the Local Government Act 2000 enables the Welsh Ministers to make provision by regulations about access to information of meetings of local authority executives.

Sections 78(13) of the 2020 Act and section 190(2) of the 1989 Act provides that the procedure for Regulations made under section 78 of the 2020 Act and section 20 of the 1989 Act are subject to the negative procedure. Section 105(5) of the 2000 Act and paragraphs 30 and 34 of Schedule 11 to the Government of Wales Act 2006 provide that the negative resolution procedure will apply to Regulations made under section 22 of the 2000 Act.

4. Purpose and intended effect of the legislation

Local authorities are being asked to undertake a number of essential and unusual functions in order to manage the ongoing COVID-19 pandemic. They are also expected to contribute to local resilience planning for the pandemic and continue the effective delivery of local services. These Regulations modify existing requirements in relation to local authority meetings for a specified period.

These Regulations aim to minimise risks to their continuing conduct of business, and ensure their members and officers can act in accordance with official health guidance. It also seeks to minimise the risk to the public and press by enabling a number of activities to be undertaken electronically rather than in person or through postal services.

Part 1

Part 1 sets out preliminary matters and defines terms used in the Regulations. It provides that provision made in the Regulations applies regardless of any provision contained in the standing orders, executive arrangements or any other rules of a local authority. If a provision in standing orders or other local rules is incompatible with any provision in the Regulations, that provision will have no effect whilst the provisions in the Regulations have effect.

Part 1 also specifies that where a body to which these Regulations apply has its own website, any requirement imposed by these Regulations to publish notices or other specified documentation electronically shall be fulfilled by the body publishing the material on that website.

Part 2

Part 2 enables participation at meetings of a local authority held before 1 May 2021 on the basis of full or partial remote attendance so long as persons who are not in the same place are able to speak to, and be heard by, other participants.

The Regulations provide that a reference to the attendance or presence of a person at a meeting in any enactment or other instrument (for example standing orders) includes by remote attendance.

The Regulations also provide that a reference to a place of a meeting is not to be read as limited to a single physical location.

Part 2 requires local authorities to have regard to any guidance issued by Welsh Ministers about remote attendance.

Part 3

Part 3 removes the requirement for the 2020 annual meeting of a principal council to be held in March, April or May 2020, those of a community council to be held in May 2020 and removes the need for the 2020 annual meeting of a National Park authority to be the first meeting after 31 May 2020. The Regulations enable the annual meetings of principal and community councils in 2020 to be held on such day in 2020 as the proper officer may determine. The Regulations enable the annual meetings of a National Park authority in 2020 to be held on such day in 2020 as is fixed by the chair of the Authority after consulting the proper officer of the Authority.

The Regulations also provide flexibility for local authorities (as defined in regulation 2) to hold a meeting other than annual meetings on such day and hour before 1 May 2021 as they may determine.

Part 3 also modifies section 85 of the Local Government Act 1972 ("the 1972 Act"). Section 85(1) provides that if a member of a local authority fails throughout a period of six consecutive months from the date of the member's last attendance to attend any meeting of the authority, the member shall, unless

the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority. Section 85(2A) makes similar provision with respect to a local authority operating executive arrangements.

Section 85 is modified by the Regulations to provide that members will not trigger the six month disqualification rule solely as a result of local authorities being unable to hold meetings because of COVID- 19.

The Regulations provide that the period beginning with the day on which the Regulations come into force and ending with the first day after the Regulations come into force on which a meeting is held (which, if the member were to attend it, would be attendance for the purposes of section 85(1) and (2A) of the 1972 Act) is to be disregarded for the purposes of calculating the period of six consecutive months under section 85(1) or (2A).

The Regulations also makes provision about the election of chairs and vice chairs of principal councils and community councils and chairs and deputy chairs of National park authorities at annual meetings. The Part provides flexibility for the timing of these elections. Similar provision is made for the election of chair of the joint board of Swansea Bay Port Health Authority and other appointments which are made at local authority meetings held before 1 May 2021. Provision is made for local authorities to allow the substitution of members to attend local planning authority committees and sub-committees. Provision is also made for community councils to determine appropriate methods for voting in meetings held before 1 May 2021.

Part 3 also makes provision for the publication of notices of meetings of principal councils, community councils and National Park authorities held before 1 May 2021 to be made electronically (and published on the body's website, where that body has its own website) and enables summons to be sent to members electronically to attend those meetings.

Part 4

Part 4 makes modifications to public access requirements in relation to certain local authority meetings, decisions of principal council executives and notices and documents relating to those meetings or decisions. Provision in Part 4 (other than regulation 22) ceases to have effect at the end of 30 April 2021.

The modifications in Part 4 provide for the publication of notices and summonses to local authority meetings to be made electronically and published on the body's website, where that body has its own website (this term also covers publishing on shared websites, pages on another authority's website and Facebook pages).

Part 4 also modifies existing legislation relating to public and press access to information relating to and the proceedings of local authority meetings. It provides for key documentation about and relating to a meeting to be made

available electronically and where a body has a website by publishing documents on that website (see explanation above).

Statutory requirements placed on local authorities by existing legislation to admit the public and the press in person to certain meetings and to provide facilities to inspect certain documents in person at offices of the authority are relaxed for the duration of these regulations. Local authorities may, if practicable, enable members of the public and the press to attend certain meetings remotely.

Part 4 includes provision to require key information such as notices, agendas, reports where practicable (subject to the usual requirements about not publishing confidential and exempt information) and the outcomes of meetings to be made available electronically, to enable local people to follow proceedings and to know what decisions local authorities are taking.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

The Welsh Government has been in regular contact with the UK Government and has had advisory consultations with bodies representing local government in Wales.

6. Regulatory Impact Assessment (RIA)

An RIA has not been prepared further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation and the urgency required to make these Regulations.



Eich cyf/Your ref
Ein cyf/Our ref

Elin Jones AM
Presiding Officer
National Assembly for Wales
Cardiff Bay
CF99 1NA

21 April 2020

Dear Elin,

The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument has come into force less than 21 days from the date of laying. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations make temporary provision for the conduct of local authority meetings and for public and press access to these meetings during the COVID-19 pandemic. For the purposes of these regulations the term local authority includes principal and community councils, an executive of a principal council, a port health authority, National Park Authorities and Fire and Rescue Authorities. It also includes committees, sub-committees and joint committees of two or more of these bodies.

The measures employed to combat the COVID-19 pandemic include social distancing, the avoidance of non-essential travel and the requirement to work from home where possible. Legislation currently places requirements on local authorities to meet in person in specified offices, to make many meetings open to the public and to enable the public to inspect documents related to the meetings, in some cases, in the offices of authorities. This runs counter to the measures in place for COVID-19.

The Regulations will enable local authorities to operate safely, effectively and lawfully, while retaining the principles of openness and accountability to the public.

The Regulations seek to achieve this by, for example, enabling authorities to conduct meetings on the basis of remote attendance, modifying existing requirements for local

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.

authorities to hold annual meetings and other meetings at specified times in 2020, and removing the requirement that meetings must be held in public. The Regulations also make provision for various documents to be published electronically, including public notices of meetings and agendas, summons to be sent to members electronically, and provision relating to the inspection of minutes following meetings.

The Regulations are required to come into force on 22 April 2020 to enable local authorities to continue to function. Local authorities are not able to make these changes by amendments to their own standing orders or other local rules as requirements for meetings are generally set out in detail in primary and secondary legislation. Without the changes set out in the Regulations, local authorities are unable to hold any meetings safely. This is preventing them from their vital efforts to respond to the COVID-19 pandemic. These arrangements will remain in place for meetings held before 1st May 2021.

In view of the circumstances surrounding the COVID-19 pandemic, not adhering to the 21-day convention is thought necessary and justifiable in this case.

Due to the immediacy of the Regulations, it has not been subject to consultation, however, the Welsh Government has been in regular contact with the UK Government and with bodies representing local government in Wales.

As referred to above, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020**

DATE **22 April 2020**

BY **Julie James AM, Minister for Housing and Local Government**

The current health outbreak is impacting all our lives and is presenting and will continue to present a number of challenges to the way we are able to operate during this period.

The work of local authorities is essential in supporting individuals, businesses and communities at this extraordinary time. The scale and nature of the challenges being experienced on a daily basis is unprecedented, but the efforts of local authorities working collaboratively with other sectors across Wales to combat this pandemic is inspiring and truly humbling.

The measures employed to combat COVID-19 include social distancing, the avoidance of non-essential travel and the requirement to work from home where possible. Legislation currently places requirements on local authorities to meet in person in specified offices, to make many meetings open to the public and to enable the public to inspect documents related to the meetings, in some cases, in the offices of local authorities. This runs counter to the measures in place for COVID-19.

It is important that where government is able to take steps to reduce barriers to business continuity and avoid unnecessary distraction that we do so.

I have, and continue to be in regular contact with Local Authority Leaders to identify steps that can be taken to support our local government family. Through these and ongoing discussions between my officials and representatives for Community Councils, National Parks Authorities, Fire and Rescue Authorities and the Swansea Bay Port Health Authority, a number of areas where the relaxation of some requirements in legislation would help those bodies to continue to carry out their important functions have been identified.

The regulations which come into effect today make temporary provision in relation to local authority meetings and for public and press access to these meetings during the COVID-19 pandemic. I do not expect local authority meetings to return to normal for some months and

therefore Councils will need to be flexible to provide for urgent business relating to COVID-19.

They provide flexibility to enable local authorities to operate safely, effectively and lawfully, while retaining the principles of openness and accountability to the public. This includes enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publishing of certain documents.

These regulations apply to principal councils and their executives, community councils, Swansea Bay Port Health Authority, National Park Authorities and Fire and Rescue Authorities across Wales.

[The regulations can be found here](#)

It is important to recognise the contribution of representatives of all these organisations during the development of these regulations which has concentrated on maintaining their focus on delivering services to individuals at local, regional and national level.

SL(5)534 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) and came into force at 12.01 am on 7 April 2020.

Specifically, these Regulations amend regulations 5, 7 and 8 of the principal Regulations, insert new regulations 6A and 7A into the principal Regulations, and make further minor and consequential amendments to them. The new provisions inserted by these Regulations relate to general restrictions on places of work (regulation 6A) and guidance issued by the Welsh Ministers in maintaining a 2 metre gap between persons (regulation 7A).

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 which causes the disease known as COVID-19 or “coronavirus”.

The purpose of the principal Regulations, which these Regulations amend, is to:

- put restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people, except in certain circumstances; and
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

The principal Regulations also revoked the Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020 (“the Business Closure Regulations”) and the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020 (“the Leisure Businesses Regulations”).

Procedure

Made affirmative: the Regulations have already been made, but require Assembly approval for them to stay into force for more than 28 days.

Technical Scrutiny

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

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



The third paragraph of the preamble of the English text is unclear. The text *“the Welsh Ministers consider that the person desachieve, which is a public response to that threat”* is unclear, and it appears that text may be missing.

The third paragraph of the preamble of the Welsh version is clear and translates as *“the Welsh Ministers consider that the amendments are proportionate with that which they are seeking to achieve, which is a public response to that threat”*.

A Government response is required to clarify the English text.

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

These Regulations, like the principal Regulations, are made in exercise of the powers conferred on the Welsh Ministers by sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act. Unlike the Business Closure Regulations and the Leisure Businesses Regulations, the Welsh Ministers have not relied on the enabling power contained in section 45C(4)(d) of the 1984 Act. Section 45C(4)(d) of the 1984 Act enables the Welsh Ministers to include in regulations a “special restriction or requirement”. For these purposes, a special restriction or requirement is “a restriction or requirement which can be imposed by a justice of the peace by virtue of section 45G(2), 45H(2) or 45I(2)” of the 1984 Act. Those restrictions and requirements include the closure of premises (section 45I(2)(a) of the 1984 Act).

Regulations 2 and 4 of these Regulations respectively amend regulations 5 and 7 of the principal Regulations, which require the closure of holiday accommodation and places of worship, during the emergency period. Regulation 7 of these Regulations also amends various provisions of the principal Regulations concerning the closure of premises. It appears that the Welsh Ministers should rely on the enabling powers under sections 45C(4)(d) of the 1984 Act in order to make regulations 2, 4 and 7 of these Regulations, as it did with the Leisure Businesses Regulations and the Business Closure Regulations.

A Government response is required to explain why the Welsh Government do not consider it necessary to rely on section 45C(4)(d) of the 1984 Act in order to make these Regulations.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

The Explanatory Memorandum that accompanies these Regulations sets out the Welsh Government’s assessment of the interference with certain articles of the European Convention on Human Rights. The assessment does not appear to be complete:

- It appears that article 9 of the European Convention on Human Rights – freedom of thought, conscience and religion – is engaged in respect of regulations 4 and 6 of these Regulations (which amend regulations 7 and 8 of the principal Regulations). This right is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights in the same manner as with articles 8 and 11 of the European Convention.
- Until the end of the transition period, the European Union Charter of Fundamental Rights will apply in the United Kingdom. There are corresponding protections to those in the European



Convention on Human Rights contained in the EU Charter of Fundamental Rights. Subject to the principle of proportionality, limitations which effect the rights under the Charter may be made if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Although the Explanatory Memorandum does not expressly consider the interference with the rights under article 9 of the European Convention, nor the rights under the EU Charter of Fundamental Rights, the justification given by the Welsh Government in relation to articles 8 and 11 of the European Convention applies equally to the interference with the rights under the article 9 and the EU Charter.

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

In the Explanatory Note, at page 2, at the paragraph beginning with "*Regulation 3 inserts new regulation 6A...*" there is a missing bracket which should be inserted. The fourth line begins with the text "*(when such work is being carried out...*" however a closed bracket should be inserted after the text "*Schedule 1*" (as has been done in the Welsh language text). This is particularly relevant as brackets are used again, later on in the same sentence.

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

Similar provisions to those contained in the principal Regulations are contained in the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the English Regulations"). Advice has been provided to Members in respect of the principal Regulations to highlight the material differences between the principal Regulations and the English Regulations. Amendments are not proposed to the English Regulations at this time.

The amendments under these Regulations create a further departure between the approaches adopted in England and Wales and may create inequality for some citizens in Wales, particularly those on the border with England.

A Government response is required to clarify the reasons for differences between the provisions in the principal Regulations that are amended by these Regulations and the English Regulations.

Implications arising from exiting the European Union

None.

Government Response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

Committee Consideration

The Committee considered the instrument at its meeting on 28 April 2020 and reports to the Assembly in line with the reporting points above.



Government response to the Legislation, Justice and Constitution Committee Report on the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

Technical scrutiny

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

1.1. NAW Legal Advisors have noted an error in the third paragraph of the preamble of the English text of the Regulations.

1.2. A correction slip remedying the text was issued by the Queen’s Printer on 20 April 2020.

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

2.1. NAW Legal Advisors have queried why the Welsh Ministers did not rely on the enabling power contained in section 45C(4)(d) of the Public Health (Control of Diseases) Act 1984 to make the Regulations. A similar question was raised for the principal Regulations, please refer to the Government’s response which is relevant here.

2.2. The Government’s view therefore is that these Regulations have been made in exercise of the powers which accurately reflect the content of them.

Merits scrutiny

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

3.1. NAW Legal Advisors have identified a number of differences between the principal Regulations for Wales and the equivalent provision for England, and raise the same point for the amending Regulations. We reiterate our response made on the principal Regulations that the Government is working with the UK Government and the other devolved administrations to ensure a coordinated response to the pandemic. However, the powers in Part 2A of the Public Health (Control of Disease) Act 1984 are conferred on the Welsh Ministers in relation to Wales so that provision may be made which is specifically suited to circumstances in Wales and based on decisions made by the Welsh Ministers. The Government is again surprised by the comments made, which seem to imply that the Government should justify any departure from the law as it stands in relation to England.

**Welsh Government
28 April 2020**

Mick Antoniw AM
Chair,
Legislation, Justice and Constitution Committee
Mick.Antoniw@assembly.wales

28 April 2020

Dear Mick,

I am writing to notify you that UK Government has made the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 under powers set out in the Direct Payment for Farmers (Legislative Continuity) Act 2020 ('the DPLC Act').

The DPLC incorporated the EU legislation governing the 2020 CAP Direct Payment schemes into domestic law on Exit Day. This was due to the fact that Article 137 of the Withdrawal Agreement disapplied the Direct Payments Regulation for the UK for claim year 2020 from Exit Day.

Certain provisions in regulations made under the European Union (Withdrawal) Act 2018 ("2018 Act") would not currently apply to any regulations made under the DPLC Act. This is because the DPLC Act incorporated the Direct Payments legislation into UK law separately from the 2018 Act and because the incorporation takes effect on Exit Day rather than at the end of the Implementation Period.

The Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 amend provisions in the Interpretation Act 1978, the Statutory Instruments Act 1946, the Legislation (Wales) Act 2019 (anaw 4), the Interpretation and Legislative Reform (Scotland) Act 2010, the Interpretation (Northern Ireland) Act 1954, the Statutory Rules (Northern Ireland) Order 1979, the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019.

This instrument is made subject to the negative procedure.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here:

<http://www.legislation.gov.uk/uksi/2020/463/contents/made>

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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.

In respect of any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, I confirm that the Common Agricultural Policy and its implementation in Wales is a devolved subject. The Assembly's Standing Order (SO) 30A requires a SICM to be laid within three days of a UK statutory instrument being laid in Parliament, if the instrument makes provision in relation to Wales amending primary legislation within the Assembly's legislative competence. This applies in the case of these Regulations as they make amendments to the Interpretation Act 1978, the Statutory Instruments Act 1946 and the Legislation (Wales) Act 2019 which make provision with regards to devolved matters.

The Welsh Ministers have provided consent for the UK Government to make these amendments in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments ensure that the statute book remains functional following the UK's exit from the EU.

I am copying this letter to the Counsel General and Minister for European Transition and the Minister for Environment, Energy and Rural Affairs.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh
Language

Agenda Item 4.2

Llywodraeth Cymru
Welsh Government

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Chair of External Affairs and Additional Legislation Committee
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[Cc: LJC Committee Members](#)

29 April 2020

Dear David and Mick,

I wrote to you on 21 April to inform you that another meeting of the Ministerial Forum for Trade would be taking place on the 22 April. I agreed to write to you again following that meeting.

Conor Burns, Minister for International Trade, chaired the meeting on the 22 April. The Scottish trade Minister and the Ministers for the constituent parts of the UK were also present.

The meeting predominately focused on discussing the response to the covid-19 pandemic and in looking at the work needed to support any economic recovery once the current crisis passes. Work to prepare for negotiations with the priority countries continues and is seen by DiT as an important part of any economic recovery effort.

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The remainder of the meeting provided updates on the UK Trade Bill timings and Global Tariffs progress. This is only the second meeting of the MFT, but the engagement is positive and my officials continue to work closely with UK Government officials to progress this work.

We currently do not have a date for the next meeting, but I will write to you again before any further meetings take place

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AC/AM

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol

Minister for International Relations and the Welsh Language

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Mick Antoniw AM
Committee Chair
Legislation, Justice and Constitution Committee
The National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

28 April 2020

Dear Mick,

Legislative Consent Memorandum on the Agriculture Bill: Evidence session

Thank you for the opportunity to explain the Legislative Consent Memorandum (LCM) on the UK Agriculture Bill at the Legislation, Justice and Constitution Committee on 16 March.

I have identified an error in my response to the questions raised by Carwyn Jones AM regarding my outstanding concerns regarding provisions for the identification and traceability of animals, agricultural tenancies and the regulation of organic products.

The correct response in relation to a dispute mechanism for tenants is that due to the removal of the new financial assistance powers for Welsh Ministers in the Bill, the Agriculture Wales Bill to be brought forward in the Senedd will provide an appropriate legislative vehicle to ensure access to new schemes for tenant farmers in Wales.

I would like to clarify this is no longer a red line. The two red lines relate to clauses 32, 36 and 37 on the identification and traceability of animals and regulation of organic products and good progress continues to be made on these.

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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.

I apologise for this error and hope the Committee is satisfied with my response.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs