

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.



Legal Advisers
Legislation, Justice and Constitution Committee
23 April 2020



Cynulliad Cenedlaethol Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
National Assembly for Wales
Legislation, Justice and Constitution Committee