

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

## Background and Purpose

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

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

## Procedure

Negative.

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

## Technical Scrutiny

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

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

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

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

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



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

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

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

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

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

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

## **Merits Scrutiny**

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



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

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

### **Welsh Government response**

A Welsh Government response is required in respect of points 1-3, above.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**3 May 2022**

