

Lesley Griffiths MS
Minister for Rural Affairs and North Wales, and Trefnydd

6 October 2022

Dear Lesley

Agricultural Wages (No.2) (Wales) Order 2022

At our meeting on 26 September 2022 we considered the Agricultural Wages (No.2) (Wales) Order 2022 and the Welsh Government's response to our draft reporting points. Our report on the Order has now been laid before the Senedd.

You will be aware that our report raises three technical points, in accordance with Standing Order 21.2, and one merits point, in accordance with Standing Order 21.3. While we considered and acknowledged the Welsh Government response to these points during our meeting, we have a number of further questions to raise with you as regards the response we received to the second and third technical reporting points.

The second technical point seeks further explanation around the term "apprenticeship framework", which is defined in the Order by reference to frameworks published by Lantra. In particular, the Welsh Government is asked whether the dates of any such frameworks will be clear, to avoid the Order capturing frameworks published after the Order comes into force. This is important because the content of future frameworks is unknown. If future frameworks are captured by the Order then this will amount to sub-delegation to Lantra of the Welsh Ministers powers to make legislation.

In response, the Welsh Government notes that the issue date of each framework is published in Lantra's online frameworks library. The Welsh Government also says that "The definition of apprenticeship framework is "any of the **current** apprenticeship frameworks for the agricultural sector in Wales published by Lantra, or previous versions of the apprenticeship frameworks for the agricultural sector in Wales published by Lantra." The Welsh Government considers that the use of the word "current" makes it clear that it is those apprenticeship frameworks which have been issued before the date the order comes into force that are taken into account.

While this response makes it clear that the Welsh Government is properly seeking to avoid sub-delegation, we believe that there is still potentially an issue with the use of the word "current" in this context. It may not be sufficiently clear that the word "current" is intended to denote a fixed point in time. Someone who reads the Order in, for example, six months' time will not necessarily know that current is intended to mean 'current, at the date this order came into force'. We believe this creates uncertainty as to the extent of the law.

We would welcome further clarity and explanation as to why the word "current" was considered appropriate in these circumstances, and confirmation as to whether the use of a phrase such as 'published on or before the date that this Order comes into force' was considered to avoid creating uncertainty for the lay reader?

The third technical point asks the Welsh Government how the statutory duties imposed on agricultural workers by Article 10 of the Order will be enforced. In response, the Welsh Government states "Article 10 has been included in the Agricultural Wages Order since 2016. It is included to ensure that agricultural employees maintain documentary evidence of qualifications and experience gained by them in order for them to be able to demonstrate to their employer that they have the necessary qualifications and experience to be employed at a particular grade. Welsh Government would not propose to enforce this provision. It is simply the case that if employees do not comply with article 10 and do not maintain documentary evidence of qualifications and experience, they may not be able to demonstrate to their employer that they have the necessary qualifications and experience to be employed at a particular grade."

We do not consider it to be good practice for legislation to impose a statutory duty on individuals without setting out clearly the consequences and methods of enforcement that will apply if that duty is breached. This may create uncertainty for agricultural workers subject to the duty. There is also the potential for unintended consequences. For example, might an employer seek to enforce these duties by way of a private law claim against an employee?

We would welcome further clarity and explanation as to why the Welsh Government considers that imposing a statutory duty is the best way to achieve its aim of encouraging workers to maintain documentary evidence, particularly when the Welsh Government does not envisage the duties being enforced.

In particular, we would welcome a response to the following questions:

- How and why did the Welsh Government decide that a statutory duty was the most appropriate way of achieving its aim, and what other options were considered?
- Why impose a statutory duty if there is no intention of enforcing it?

- Why are there no safeguards to avoid unintended consequences, such as attempted private law claims?

We would be grateful to receive your response by 20 October.

Yours sincerely,

Huw Irranca-Davies

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Chair