

# SL(6)238 – The Agricultural Wages (No. 2) (Wales) Order 2022

## Background and Purpose

This Order revokes and replaces, subject to some changes and a transitional provision, the Agricultural Wages (Wales) Order 2022.

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 and specifies the different grades and categories of agricultural worker.

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

Part 4 provides that an agricultural worker is entitled to agricultural sick pay in the circumstances specified. Provision is made about calculating the amount of agricultural sick pay that an agricultural worker is entitled to. A payment of statutory sick pay is to count towards an agricultural worker's entitlement to agricultural sick pay.

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, daily rest and a weekly rest period. Provision is also made specifying the agricultural worker's annual leave year and about the agricultural worker's entitlement to annual leave, holiday pay and about payment in lieu of annual leave. Provision is also made about an agricultural worker's entitlement to be paid bereavement leave.

## 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 three 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**



This Order came into force on 6 August 2022 but it took effect from 1 April 2022; in other words, it had retrospective effect. The previous 2022 Order (i.e. the Agricultural Wages (Wales) Order 2022) also had retrospective effect.

The Explanatory Memorandum states that “delays to making the previous 2022 Order meant this Order could not be progressed to the usual annual timetable”.

We note that the Agricultural Sector (Wales) Act 2014 does not expressly provide that agricultural wages orders can have retrospective effect

The Welsh Government is asked:

- what, if any, issues the retrospectivity of this Order has caused in practice for agricultural workers and their employers, and what unfairness has the retrospectivity caused?
- to confirm whether any arrangements have been put in place to ensure that the next Order will be progressed in a more timely manner, without the need for it to have retrospective effect?

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

Article 2(1) defines “apprenticeship framework” by reference to apprenticeship frameworks that have been published by Lantra. A footnote provides a link to the following webpage: <https://acwcerts.co.uk/web/frameworks-library>. However, the frameworks library on that webpage appears to be empty.

This creates confusion as to the meaning of an important term (“apprenticeship framework”) used in the Order. It also makes the law inaccessible.

The Welsh Government is asked to clarify what is meant by “apprenticeship framework” and how readers can find out what apprenticeship frameworks for the agricultural sector in Wales have been published by Lantra.

The Welsh Government is also asked to confirm that the date of any apprenticeship framework will be clear, so that the Order captures only apprenticeship frameworks that have already been published. This is necessary to avoid the Order capturing **future** apprenticeship frameworks – it is crucial to avoid capturing future apprenticeship frameworks because the content of those frameworks is currently unknown and capturing them in the Order would amount to sub-delegating to Lantra a power to legislate.

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

Article 10 says that agricultural workers **must** maintain documentary evidence of qualifications and experience gained by them that is relevant to their employment, and that



they **must** inform their employer if they have gained qualifications and experience that enables them to be employed at a different grade.

The Welsh Government is asked to explain how will this **statutory duty** be enforced?

## Merits Scrutiny

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

### **4. 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**

Articles 29, 30 and 31 provide for rest breaks, daily rest periods and weekly rest periods. These articles include new provisions that apply to agricultural workers who are under 18.

However, the Explanatory Memorandum makes no reference to a children’s rights impact assessment having been carried out. Under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers must, when exercising any of their functions, have due regard to the requirements of, among other things, Part I of the UN Convention on the Rights of the Child.

Can the Welsh Government confirm it complied with that duty when making the Order and what, if any, were the main issues that arose as part of its consideration of the Convention?

## Welsh Government response

### Technical Scrutiny

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

Welsh Government is not aware of any issues or unfairness the retrospective application of the Order has caused in practice for agricultural workers or their employers.

Welsh Government and the Panel agree that the 2023 Order must be made in a timely manner and without retrospective effect. The 2022 (No.2) Order was made later than the usual coming into force date of 1 April due to the delay in making the 2022 Order. It is not anticipated that the delayed making of the 2022 (No.2) Order will delay the making of the 2023 Order.

The next Panel meetings take place on 5 and 6 September 2022, where the draft 2023 Order will be negotiated and agreed prior to consultation with stakeholders. Policy officials have drafted a timetable setting out key milestones and deliverables for the Panel’s agreement which will ensure the 2023 Order is made by 1 April 2023, as intended by the Panel.

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



Welsh Government has checked the link to the frameworks library and the link is working. It is clear from the frameworks library which frameworks are published by Lantra and the issue date of each of those frameworks.

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". 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.

**Point 3: Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation**

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.

**Merits Scrutiny**

**Point 4: 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**

A Children's Rights Impact Assessment was carried out in relation to the Order and it was contained within the Integrated Impact Assessment. No particular consideration was given to articles 29, 30 and 31, as these articles reflect the existing provisions relating to rest periods which are contained within the Working Time Regulations 1998, and which therefore already apply to agricultural employees in Wales.

**Committee Consideration**

The Committee considered the instrument and Welsh Government response at its meeting on 26 September 2022 and reports to the Senedd in line with the reporting points above.

