

SL(5)150 - The Agriculture Wages (Wales) Order 2017

Background and Purpose

The Order makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. It revokes and replaces the Agricultural Wages (Wales) Order 2016 with some changes which include increases to the 2016 pay levels for agricultural workers.

The Order was made on 2 November 2017 and came into force on 3 November 2017. By letter dated 2 November 2017, Jane Hutt, the then Leader of the House and Chief Whip notified the Presiding Officer that it had been necessary to breach the 21 day rule to ensure that there is no further delay in bringing uplifted agricultural wage rates into force.

Procedure

Negative.

Technical Scrutiny

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

1. The definition of 'sickness absence' in article 2 contains the expression "illness or incapacity caused by the agricultural worker's pregnancy or maternity". The corresponding definition in the Welsh text of 'absenoldeb salwch' refers to "salwch neu analluedd a achosir am fod y gweithiwr amaethyddol yn feichiog neu'n fam". Whilst the English word 'maternity' implies being the mother of a young child, the Welsh 'bod yn fam' (*being a mother*) will apply for the rest of the mother's life. The Welsh word for 'maternity, 'mamolaeth', is used in the definition of 'diwrnodau cymwys' (qualifying days) in the same article. **[Standing Order 21.2(vii) – inconsistencies between the meanings of the Welsh and English texts]**
2. The English text of article 31(4) contains the expression 'the employer is entitled to deduct'. The corresponding Welsh text states 'mae gan y gweithiwr hawl i ddiwynnu' (*the worker is entitled to deduct*). It is clear from the context that the English text is correct. **[Standing Order 21.2(vii) – inconsistencies between the meanings of the Welsh and English texts]**
3. The Order has a coming into force date of 3 November 2017, however Article 1 (2) of the Order provides that the Order applies as if it had come into force in 1 April 2017. There is no power in the enabling legislation (the Agricultural Sector (Wales) Act 2014) for orders to have retrospective effect.

Paragraph 10 of the Explanatory Memorandum explains that the panel undertook a targeted consultation on the new proposed rates during the autumn of 2016.



The Explanatory Memorandum states that:-

“The intention of the panel was to have the new Order in force on 1 April [2017], the same date the National Living Wage and National Minimum Wage increases took effect.....However, the 1 April coming into force date was not achieved.”

The Explanatory Memorandum does not provide any further information as to the reason for the delay, however the letter from Jane Hutt, the then Leader of the House and Chief Whip dated 2 November 2017 which accompanies the Order states that:-

“This is the first time the Panel prepared a draft wages order since its establishment on 1 April 2016 and there have been some difficulties in setting up the effective process for making new wages orders as required under the statutory procedures of the Agricultural Sector (Wales) Act 2014 and the Agricultural Advisory Panel for Wales (Establishment) Order 2016.”

During the period 1 April 2017 to 2 November 2017 agricultural workers' wages in Wales were subject to the rates specified in the Agricultural Wages (Wales) Order 2016 except for minimum rates in the Order which fell below the UK National Minimum Wage and National Living Wage levels.

In a **statement** dated 5 April 2017, Lesley Griffiths, the then Cabinet Secretary for Environment and Rural Affairs said:-

“I am grateful to the Panel for preparing a new wages order in draft and submitting it to me for approval. I have referred the draft Order back to the Panel for consideration and resubmission to me. Until any new wages order comes into force, agricultural workers in Wales will continue to be subject to the terms and conditions of the Agricultural Wages (Wales) Order 2016.”

The increase to the UK National Minimum Wage and the UK National Living Wage rates on 1 April impacts on the wages of some farm workers in Wales. The table below summarises the changes in respect of agricultural workers employed at Grades 1 and 2.

Grade	Minimum Hourly Rate from 1 April 2017
Grade 1: 25 and over:	£7.50
Grade 1: 21-24:	£7.05
Grade 1: 16-20:	£6.72
Grade 2 (aged 25 and over)	£7.50



All other categories and grades of workers will be subject to the rates specified by the Agricultural Wages (Wales) Order 2016. The rates for apprentices will also remain unchanged. "

The greatest increase in pay rates concerns Grade 1 workers aged between 16-20. The minimum hourly rate for those workers has increased from £6.72 to £7.06 an increase of 5.05%.

As the Order has retrospective effect this and all other increases will be backdated to 1 April 2017. This means that employers of agricultural workers paying below the rates in the 2017 Order will be responsible for paying arrears.

Whilst it is recognised that retrospective legislation can in some circumstances be appropriate and desirable, it is not generally to be encouraged. It is not sufficiently clear within the Explanatory Memorandum why there has been a delay of over 7 months in laying this Order. It is not sufficiently clear within the Explanatory Memorandum why there has been a delay of over 7 months in laying this Order. It is not sufficiently clear within the Explanatory Memorandum why there has been a delay of over 7 months in laying this Order.

It is the view of the legal advisers to the Committee that this instrument engages Article 1 Protocol 1 of the European Convention on Human Rights ("A1P1") which provides as follows:-

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
- (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

The Committee is concerned that the Explanatory Memorandum does not address whether following the statement for the Cabinet Secretary for Environment and Rural Affairs on 5 April 2017, there was any further communication with employers of agricultural workers to make them aware that any increases in rates of pay would be backdated.

The Committee is unable on the information available to form a view on whether the Order is compatible with A1P1.

Section 81 of the Government of Wales Act 2006 provides that the Welsh Ministers have no power to make any subordinate legislation so far as it is incompatible with any of the Convention Rights.

[Standing Order 21.2 (i) that there appears to be doubt as to whether it is intra vires; Standing Order (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority].



Merits Scrutiny

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

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

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

November 2017

