

SL(5)208 – The Agricultural Wages (Wales) Order 2018

Background and Purpose

The Agricultural Wages (Wales) Order 2018 (“the 2018 Order”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The 2018 Order revokes and replaces the Agricultural Wages (Wales) Order 2017 (“the 2017 Order”) with changes which increase the 2017 pay levels for agricultural workers.

Procedure

Negative.

Technical Scrutiny

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

Point 1. Standing Order 21.2(v) – the meaning of the instrument needs further explanation.

In brief, article 15(1) says that, where an employer provides an agricultural worker with a house, the employer may deduct £1.50 an hour from the agricultural worker’s minimum wage.

In brief, article 15(2) says that, where an employer provides an agricultural worker with “other accommodation”, the employer may deduct £4.82 an hour from the agricultural worker’s minimum wage.

A deduction of £4.82 an hour appears to be a very large deduction given the hourly rates that apply to agricultural workers. We would therefore appreciate: (1) confirmation whether our understanding of articles 15(1) and 15(2) is correct, and (2) further information around the provision of “other accommodation” and the deduction allowed under article 15(2).

Point 2. Standing Order 21.2(vii) – there appears to be inconsistency between the meaning of the English and Welsh texts.

Article 43(2) in the Welsh makes transitional arrangements for “an agricultural worker employed as a worker at a Grade or as an apprentice but not as a flexible worker”.

Article 43(2) in the English makes transitional arrangements for “an agricultural worker employed as a worker at a Grade or as an apprentice”. In the English, therefore, there is no mention of flexible workers.

Merits Scrutiny

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

Point 1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

We would welcome clarification as to why this 2018 Order was not made until 27 March 2018 and not laid until after 4pm on 29 March 2018 (Maundy Thursday), particularly given its coming into force date of 1 April 2018 (Easter Sunday).



We note that consultation took place in autumn 2017, and that changes in the rates of national minimum and living wages were made in late November 2017 which resulted in a review. We would welcome clarification as to why the review took over 4 months to be reflected in a final 2018 Order.

We would also welcome an explanation as to why we were not formally notified in advance of the problems with this Order given that the breach of the 21-day rule occurred on 9 March 2018.

As well as for issues of timing and communication, we also feel the need to raise this concern because last year's order (i.e. the 2017 Order) also breached the 21-day rule, when it was made on 2 November 2017 and came into force on 3 November 2017.

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

Technical Scrutiny:

Point 1: Standing Order 21.2 (v) – the meaning of the instrument needs further explanation.

The point is not accepted.

Article 15(1) - (3) provides:

“(1) 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 minimum wage payable under article 12 of this Order for that week.

(2) Subject to paragraphs (3) and (4), 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 minimum wage payable under article 12 of this Order for each day in the week that the other accommodation is provided to the worker.

(3) The deduction in paragraph (2) may only be made when the agricultural worker has worked for a minimum of 15 hours in that week.”

The provision of a house or other accommodation to an agricultural worker is a payment in kind which can form part of the agricultural worker’s minimum wage. Article 15 prescribes the amounts which may be deducted where a house or other accommodation is provided.

In accordance with article 15(2), a small deduction of £4.82 can be made per day in any week that ‘other accommodation’ is provided to the worker and may only be made when the agricultural worker has worked for a minimum of 15 hours in that week. The reference in the Order to ‘other accommodation’ is intentionally unlimited.

The Committee may wish to note that the Agricultural Advisory Panel, whose remit includes preparing agricultural wages orders in draft for Welsh Ministers is currently examining the provisions in agricultural wages orders. The Accommodation Offset Allowance is included in that exercise.

Point 2: Standing Order 21.2(vii) – there appears to be inconsistency between the meaning of the English and Welsh text.



The point is accepted.

The Welsh and English texts are not equivalent. This point will be considered afresh in any future agricultural wages orders made.

Merits Scrutiny:

Point 1: Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy to be of interest to the Assembly.

The point is not accepted.

The Agricultural Advisory Panel for Wales (“the Panel”) has the function of preparing agricultural wages orders in draft, consulting on such orders and submitting them to the Welsh Ministers for approval. In accordance with their functions, the Panel submitted the draft Agricultural Wages (Wales) Order 2018 for approval in November 2017.

Changes to the national minimum wage rates intended to take effect on 1 April 2018 were published in November 2017, after the Panel had submitted the draft Order for approval. The proposed national minimum wage rates were higher than anticipated and, in some respects, higher than the agricultural minimum wage rates proposed by the Panel in the draft Order.

Section 3(5) of the Agricultural Sector (Wales) Act 2014 prevents agricultural minimum wage rates being prescribed in agricultural wages orders which are lower than the national minimum wage rates. The Panel reconsidered the agricultural minimum rates proposed in the draft Order and submitted a revised Order approximately two months later, in January 2018.

It remained the Panel’s intention that the draft Agricultural Wages (Wales) Order 2018 would come into force on 1st April 2018, the same date increased national minimum and living wage rates would take effect. Introducing agricultural minimum wage rate changes at the start of the financial year and co-ordinating with other minimum wage rate rises benefits business planning in the industry and provides clarity for agricultural workers and employers.

Section 4(1) of the Agricultural Sector (Wales) Act 2014 provides that the Welsh Ministers may, after receiving a draft agricultural wages order from the Panel –

- (a) approve and make the Order, or
- (b) refer the order back to the Panel for further consideration and resubmission.

A decision to breach the 21 day rule was made on 22nd March , so that the coming into force date of 1 April could be met to provide clarity for the industry in their business planning.

The Agricultural Wages (Wales) Order 2018 was approved and made on 27th March 2018. Following the registration process, the Order was laid on 29th March 2018.

In accordance with the requirement in section 11A(4) of the Statutory Instruments Act 1946, notification was sent from the Leader of the House to the Presiding Officer drawing attention to the fact that a copy of the instrument was not laid before the Assembly at least 21 days before it came into force and setting out the reasons for this.



The concern that no additional notification was provided to the Committee is noted and consideration will be given to whether advance notification would be helpful should similar circumstances arise in respect of future wages orders.

Committee Consideration

The Committee considered the instrument at its meeting on 23 April along with the Government response.

Technical Reporting Point 1

We note that the explanation provided by the Government sets out clearly the policy intent that the total amount that can be deducted for the provision of "other accommodation" under article 15(2) is £4.82 a day. However, we believe that could have been made clearer in the Order and its Explanatory Memorandum.

The position was further confused by article 15(1). We have since received confirmation from the Government that the total amount that can be deducted for the provision of a "house" under article 15(1) is £1.50 a week. Again, we note there is no explanation in the Explanatory Memorandum as to why it is appropriate to deduct £1.50 a week for a house but £4.82 a day for other accommodation.

Technical Reporting Point 2

We note that the inconsistency will be addressed in future agricultural wages orders and that, therefore, the inconsistency will remain in the legislation until it is corrected. We note also that the Government response does not indicate which version is correct, the Welsh or the English.

Merits Reporting Point 1

It remains unclear why it took until 27 March 2018 to approve the draft Order, when the draft Order was submitted to the Welsh Ministers in January 2018.

Leaving approval so late meant that the 21-day rule was breached (and breached by a whole 19 days). The 21-day rule is an important rule, that is why it is in statute, and breach of the rule must be taken seriously. Therefore, we will be writing to the Government separately about these issues of timing.

