

SL(5)394 – The Agricultural Wages (Wales) Order 2019

Background and Purpose

This Order is made by the Welsh Ministers pursuant to sections 3, 4(1) and 17 of the Agricultural Sector (Wales) Act 2014. It makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The Order revokes and replaces, subject to some changes and transitional provision, the Agricultural Wages (Wales) Order 2018 (“the **2018 Order**”) and therefore increases the 2018 pay rates for agricultural workers.

Procedure

Negative.

Technical Scrutiny

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

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

Article 15(1) confirms that, 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 for that week.

Article 15(2) confirms that, where in any week an employer provides an agricultural worker with “other accommodation”, the employer may, subject to certain conditions, deduct the sum of £4.82 from the agricultural worker’s minimum wage for each day in the week that the other accommodation is provided to the worker.

An agricultural worker’s minimum wage is determined in accordance with Article 12 of, and Schedule 4 to, the Order, which sets out minimum hourly rates.

Articles 15(1) and (2) may be interpreted as permitting an employer to make:

- a) deductions of £1.50 and £4.82 respectively from the hourly rate in accordance with which an agricultural worker’s minimum wage is calculated; or
- b) net deductions of £1.50 and £4.82 respectively,

for the relevant periods referred to, and in the circumstances described in, those provisions.

Article 15 replicates provision contained in the 2018 Order. During scrutiny of the 2018 Order, the Committee queried this drafting. In its response, the Welsh Government did not accept the points raised by the Committee. However, the Committee considers that the drafting of Article 15 in this Order should be reviewed in light of the clear scope for alternative interpretation of the permissible deductions.



2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Article 21(2) sets out the maximum numbers of weeks that an agricultural worker is entitled to agricultural sick pay in each period of entitlement. The relevant maximum number of weeks is determined by reference to the length of a worker's employment with the same employer. There are five fixed levels of entitlement set out in Article 21(2), which range between 13 and 26 weeks of entitlement.

The drafting of this provision employs an "at least [x] months but not more than [x] months" format to describe the length of employment to which each level of entitlement applies. For example, an agricultural worker is entitled to 16 weeks agricultural sick pay where the agricultural worker has been employed by the same employer for "at least 24 months but not more than 36 months" (per Article 21(2)(b)).

There appears to be an unintended consequence of this drafting approach in that, at set intervals during an employee's period of employment, being exactly 24, 36, 48 and 59 months respectively, two separate levels of entitlement could apply to that employee. For example, if an agricultural worker has been employed for exactly 24 months, then in accordance with the provisions of the Order, that worker could be regarded as being entitled to:

- a) 13 weeks sick pay (on the basis of being employed for **not more than** 24 months per Article 21(2)(a)); and also,
- b) 16 weeks sick pay (on the basis of being employed **at least** 24 months per Article 21(2)(b)).

3. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In Article 22(3)(a) of the Welsh language version of the Order, it appears that 'dwy rannu' should instead read 'drwy rannu'.

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

20 March 2019

