



Llywodraeth Cymru
Welsh Government

MEETING, DOCUMENT

Agricultural Advisory Panel meeting: 27 June 2023

Minutes of the meeting held at the Welsh Government
Pavilion, Royal Welsh Showground, Llanelwedd.

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Present

Chair – Dr Nerys Llewelyn Jones

Independents – Steve Hughson, Janatha Stout

NFU Cymru – Simon Davies

FUW – Darren Williams

Unite – Ivan Monckton, Jo Galazka

Legal Adviser – Helen Snow (Geldards)

Welsh Government – Sian Hughes, Ryan Davies, Dave Thomas, Dan Ricketts (Secretariat)

Item 1 – housekeeping/apologies/conflict of Interest

The Chair welcomed everyone to the meeting. All Panel members were present.

Item 2 – outstanding actions/approval of minutes from AAP 41

The minutes were approved by the Panel and would be published on the AAP pages of the Welsh Government website.

An update was given on the following Action Points that were not on the agenda for the meeting:

AP4 – The AAP report for 2022/2023 is not yet ready due to other work commitments. Nerys Llewelyn Jones asked if a draft could be completed by the

next meeting.

ACTION POINT 1 – Dan Ricketts to produce a draft AAP Report for 2022/23 for the Panel to discuss at the next meeting (September 2023)

AP12 – Nerys Llewelyn Jones had a couple of suggestions for suitable people to undertake the Feasibility Study which she would pass on to the Secretariat.

AP14 – The following “signposting” links from the AAP website were suggested:

- All the organisations listed in the “Contacts” section of the guidance document including NFU Cymru, FUW and Unite.
- Link to the AAP page from the “Agricultural Wages” page.

ACTION POINT 2 – Dan Ricketts to investigate whether links to organisations can be listed on the AAP pages of the Welsh Government website.

As the AAP pages are on the Welsh Government website they are required to be in the corporate format. The Panel agreed they should be more “user-friendly” and visible to people searching for information. It was suggested the Panel put forward a “wishlist” on how to improve the website and these will be forwarded to the communications team within Welsh Government.

ACTION POINT 3 – All Panel members to consider what they would like to see on the AAP Pages of the Welsh Government website to be discussed at a future meeting.

If the website was hosted independently the question would arise as to who would manage it. Other independent bodies do have their own website e.g. Agricultural Land Tribunal.

ACTION POINT 4 – Ryan Davies to investigate how ALT Wales manage their independently hosted website.

Item 3 – updates

- Nerys Llewelyn Jones had a meeting with Cynnal Cymru on 8 June. They give support to employers who are looking to gain recognition as a Real Living Wage employer as well as projects regarding biodiversity, carbon reduction, helping organisations improve their environmental impact etc. They are keen to strengthen their links with the agricultural sector and have asked for ways to engage with the industry.
 - Articles within the farming press / Welsh Government bulletins

<https://cynnalcymru.com/>

Jo Galazka suggested that farm businesses who already pay the Real Living Wage and above should be encouraged to become accredited, although Darren Williams pointed out that all workers reach Grade C – either through education or time served – within 5 years and this is higher than the Real Living Wage rate.

To become accredited as Real Living Wage employer all workers over the age of 18 need to be paid the RLW as a minimum.

A discussion was held on if, and how, the Panel wish to engage:

- Link to Cynnal Cymru from the webpages
- Inviting Cynnal Cymru to speak at suitable agricultural events
- A meeting of the sub-committee on Skills Development and Training was held on 6 June. The committee have come up with a set of questions to ask the sector which would inform decisions on a future strategy. The Call for Evidence will be launched at an event organised by Farming Connect and Lantra on 19 October 2023 and would be open for 8 – 12 weeks. The responses would then be analysed in 2024.
- A response has been received from the Minister to the letter sent on 22 May

- this was distributed to all Panel members prior to the meeting.
- Dave Thomas gave an update on the Feasibility Study specification. Some issues had been raised by Welsh Government economists and statisticians. A meeting will be held next Monday (3 July) to discuss further. The PhD student placement had been advertised – the closing date was 16 June. Welsh Government officials were unaware of any applications but were awaiting a response from the team running the exercise. The aim is still for the study to be undertaken by the Autumn but it is a harder specification to put together than originally thought.

The Panel agreed the response – which needed to be sent by 14 July – outlined the challenges being faced and assuring her work was being undertaken to ensure these were being dealt with as quickly as possible.

- Dave Thomas also updated the Panel regarding the Panel Review. Advice has gone to the Minister proposing the format of the review and it has been recommended an independent expert be appointed to undertake the review. Officials are waiting for a response from the Minister.

Item 4 – report by the LJCC on The Agricultural Wages Order 2023

The Legislative, Justice and Constitution Committee (LJCC) scrutinise every piece of legislation by Welsh Government. An initial report was sent on 22 March outlining some drafting / formatting errors. These were corrected by Welsh Government by way of a “correction slip”. However, an error in Article 29 regarding rest period was not able to be corrected this way and an amended statutory instrument is now required.

Preparing Orders is a function of the Panel, however it is Welsh Government's view there are two options available in order to resolve this.

- Option One – draft an amending instrument now to correct the 2023 Order.
- Option Two – ensure the errors are corrected for the 2024 Order.

It was noted this error first materialised in the AWO 2022(2) and was not picked up by the LJCC. There have been no reported cases where the error had caused any issues.

The Panel unanimously agreed the error should be corrected in the 2024 Order.

Item 5 – Wages Order 2024 Proposed Amendments

The paper outlining the proposed legal amendments had been circulated to all members of the Panel prior to the meeting.

Helen Snow stated there are not many amendments required from a legal perspective for 2024 so far – however there may be some as a result of work being undertaken by the UK Government before April 2024. She outlined areas which, although may not be for 2024, but are things the Panel need to be aware of, including:

- A potential change to the definition of agriculture – The Agriculture (Wales) Bill provides an alternative statutory basis for the definition of agriculture. The Panel would need to decide at a later date whether this definition better reflects the scope of the agricultural sector in Wales. It was noted the definition within the Bill was only for the purposes of the Bill and did not supercede any previous definitions. Any changes would require amendments to the Agriculture Sector (Wales) Act 2014 which was not a

straightforward process.

- Darren Williams stated he was unhappy with the current definition as it did not mention energy generation and other elements of what happens on-farm
- Examples would need to be given as to where the definition is causing issues

ACTION POINT 5 – The Panel (HS) to draft a paper to Welsh Government Legal Services (WGLS) regarding an amendment or additions to the definition of agriculture within the Order to mirror the definition within the Agriculture Bill and whether it is possible for this to be done.

- The paper outlining legal arguments as to Welsh Ministers powers with regards to the setting of the overtime rate at 1.5 times the worker's actual hourly rate (as discussed in AAP 41) had been provisionally accepted by WGLS so the amendment to Article 12 can now be formally proposed within the Order (subject to public consultation) as voted by the Panel last year.

Darren Williams reiterated his opposition to the amendment saying it would discourage employers from paying above the minimum rates.

- The UK Government are undertaking consultations in relation to holiday pay as part of proposed amendments to the Working Time Regulations. This includes the calculation of holiday for those working irregular hours and the potential to pay in lieu of holiday. Dependant on the results any proposed amendments or new legislation could impact upon these provisions. There is currently no timetable in place but they may happen before April 2024.

A paragraph could be put in the consultation document stating the Panel is keeping a watching brief on these aspects and that if changes are made the Order may need to be amended to reflect UK employment law.

- It was suggested that if some articles of the Order are just reflecting UK Law they could be removed from the Order altogether but still referred to in

guidance.

Helen Snow stated the provisions have been maintained from the original Order (tweaked slightly due to changes in the Employment Rights Act). The provisions could be removed from the Order leaving just the enhanced provisions which are above the minimum as set out in UK law – the guidance document could then be more comprehensive.

The Panel unanimously agreed the provisions which duplicate UK employment law should be removed from the Order with the guidance document becoming more comprehensive.

ACTION POINT 6 – Helen Snow to write to Welsh Government Legal Services regarding the “stripping out” of replicated UK Law provisions within the Order and whether it is possible for this to be done.

ACTION POINT 7 – Sian Hughes to attempt to establish links with UK Government counterparts regarding being informed of any future changes in UK employment which would affect the Agricultural Wages Order.

There were no proposed amendments from NFU Cymru / FUW or Unite.

Salary Calculation

Darren Williams said he has received a query regarding the calculation of salary as employers still need to ensure a worker’s salary abides by the hourly rates as set by the Agricultural Wages Order. It was suggested this was added to the guidance document to remind / assist employers.

ACTION POINT 8 – Dan Ricketts to include information regarding the calculation of salary within the 2024 Wages Order Guidance.

Guidance document

It was suggested information was added to the guidance document regarding the ability to undertake flexible working / jobshare within the industry. More needs to be done in terms of promoting areas such as this in order to encourage people to come into the industry.

ACTION POINT 9 – Helen Snow to draft a paper regarding flexible working / jobshare etc within the agricultural sector.

However, Dave Thomas said care must be taken with regard to interpreting UK legislation and putting it into the guidance. It would be better to include a section of hyperlinks to the relevant legislation.

Allowances

A discussion was held regarding the various allowances within the Order and whether they are still relevant. Nerys Llewelyn Jones stated it was important that when the negotiations take place in September these allowances have been properly considered and a full discussion can take place regarding any tweaks or clarifications that are required as well as the rates (if the allowance is still relevant within modern agriculture).

Ivan Monckton requested that information was sent out regarding the allowance rates in previous years.

ACTION POINT 10 – Dan Ricketts to send information regarding allowance rates within the Agricultural Wages Order in previous years.

Accommodation offset allowance

Darren Williams stated the Accommodation Offset Allowance was acting as a disincentive for employers to provide properties for workers when it could be rented out at “market rate” or used as a AirBnB. Even the UK Government rate would be challenging but would help. It is also one of the few articles within the Order where UK Government legislation is not followed as a minimum.

Nerys Llewelyn Jones stated that if the property was a “tied (Section 106) house” where the worker is required to live in as part of their contract it can only be let to an agricultural worker. There are many other houses that do not have this restriction – these could be let to an agricultural worker for a maximum of the “Other Accommodation” rate (currently £5.29 per day) or let to the public at market rate.

The Order in Scotland and the accommodation offset rate as set under the National Minimum Wage tracks the NMW rate for “Other Accommodation” – the order in Wales does not (although it did until 2012 when the England & Wales Board was abolished).

The maximum offset that can be deducted on “Other Accommodation” is the NMW rate - it cannot go above that.

Nerys Llewelyn Jones stated the role of the Panel is to ensure the Agricultural Wages Order is fit for purpose for the industry as a whole.

What would be the best thing for the industry in terms of these allowances?

Helen Snow said the Order should be seen as a template where you think about which elements you would enhance over and above the statutory minimum as set in UK employment law.

ACTION POINT 11 – NFU Cymru / FUW / Unite to discuss all allowances (including Accommodation Offset) within their organisations, ensure they are properly considered and included in the submitted proposal documents (including the rationale behind them)

ACTION POINT 12 – NFU Cymru / FUW / Unite to consider any additional allowances not currently in the Order and include in the submitted proposal documents (including the rationale behind them)

ACTION POINT 13 – Secretariat (RD) to draft a discussion paper on the different types of agricultural lettings.

The meeting then went into private session to undertake an internal Panel Effectiveness Review.

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