



Llywodraeth Cymru
Welsh Government

PUBLICATION

The Agricultural Wages Order 2023

We are seeking your views on changes to the Agricultural
Wales Order 2023.

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Introduction

The independent Agricultural Advisory Panel for Wales' consultation to seek views on the Agricultural Wales Order 2023, containing changes on pay structures, minimum wage rates and allowances and other conditions of employment.

Background

The Agricultural Advisory Panel for Wales is an independent body that advises Welsh Ministers on the Agricultural Minimum Wage arrangements and terms and conditions of employment for agricultural, horticultural and forestry workers. It also promotes careers in agriculture, horticulture and forestry, the development of an appropriately skilled workforce and provides additional advice to Ministers as required.

Annually, the Panel review the Agricultural Minimum Wage (AMW) arrangements, and the other provisions of the Agricultural Wages Order (AWO) propose changes and consult on their proposals before submitting them in draft to Welsh Ministers for consideration. Once passed by the Senedd, the AWO has legal authority in Wales.

In arriving at their decisions, the panel draw on their expertise and consideration of the economic conditions in the industry at the time, as well as all legal requirements (such as the National Minimum Wage). This ensures agricultural workers receive fair, regularly reviewed, wages, allowances and terms of employment, further contributing to the Welsh Government's tackling poverty agenda by safeguarding household incomes, especially within rural communities.

The panel is made up of representatives from the Farmers Union of Wales, National Farmers Union Cymru, Unite the Union and three independent members.

The Welsh Government sponsorship division provides the secretariat function for the Panel, and an external law firm advise the Panel on any legal issues arising and legal compliance generally. They also prepare the draft AWOs which give effect to the decisions of the Panel.

This document seeks your views on the Panel's proposed changes to the current AWO arrangements to apply from 1 April 2023. The proposals were made at the Panel's meeting on 5/6 September 2022 and are listed below.

1. Minimum rates of pay

The Panel considered the minimum rates of pay which should apply to each of the grades from April 2023. The proposed minimum wage rates were arrived at through negotiation and consideration of employment practices and economic conditions within the sector at the time, including the increase in production costs, the heightened cost of living and the end of the Common Agricultural Policy.

The proposed minimum rates for the relevant grades are set out below. As these are related to the National Minimum Wage (NMW)/National Living Wage (NLW) rates and age bands set by the UK government they may be subject to change.

Changes to the NMW/NLW rates are due to be announced in November 2022. Any changes confirmed to the NMW/NLW will take effect from 1 April 2023. The proposed 2023 minimum wage rates and relevant age bands set out below will be amended to reflect any such changes.

The Low Pay Commission (which recommends National Minimum Wage /

National Living Wage pay rates to the UK Government) has recommended the age threshold for the National Living Wage to come down to 21 years by 2024 at the latest. If the UK Government decides to reduce the age for NLW to 21 years and above from 2023 the impact on these proposals would be:

- Grades A3 and A4 will merge to provide a single grade A3 with a minimum rate of pay of NLW + 5p
- Grades B3 and B4 will merge to provide a single grade B3 with a minimum rate of pay of NLW + 3.1%

Minimum rates of pay table

Category of worker	Current Rate of Pay	Proposed Rate of Pay
A1 – Agricultural development worker (16-17 years)	£4.81	NMW
A2 – Agricultural development worker (18-20 years)	£6.83	NMW
A3 – Agricultural development worker (21-22 years)*	£9.18	NMW+5p
A4 – Agricultural development worker (23+ years)*	£9.50	NLW+5p
B1 – Agricultural worker (16-17 years)	£4.81	NMW
B2 – Agricultural worker (18-20 years)	£6.83	NMW
B3 – Agricultural worker (21-22 years)	£9.18	NMW+5p
B4 – Agricultural worker (23 years +)	£9.79	NLW+3.1%

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Category of worker	Current Rate of Pay	Proposed Rate of Pay
C – Agricultural advanced worker	£10.08	NLW+6.193%
D – Senior agricultural worker	£11.06	NLW+16.515%
E – Agricultural manager	£12.13	NLW+27.864%
Apprentice Year 1	£4.81	NMW
Apprentice Year 2 and beyond (16-17 years)	£4.81	NMW
Apprentice Year 2 and beyond (18-20 years)	£6.83	NMW
Apprentice Year 2 and beyond (21-22 years)	£9.18	NMW
Apprentice Year 2 and beyond (23+ years)	£9.50	NLW

Other proposed allowances

	Current Rate	Proposed Rate
Dog Allowance	£8.53	Current rate + % increase of NLW for 2023
Night Time Work	£1.62 per hour	Current rate + % increase of NLW for

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	Current Rate	Proposed Rate
Allowance		2023
Birth / Adoption Allowance	£67.09 per child	Current rate + % increase of NLW for 2023

Question 1: Do you agree with the proposed rates of pay and subsequent allowances for the financial year 1 April 2023?

Question 2: If not, please give details to what you feel is appropriate

2. Accommodation offset allowance

Currently, where a worker is provided with a house by the employer, which the agricultural worker is required to live in for the proper or better performance of their duties, the employer may deduct no more than £1.50 per week from the agricultural worker's minimum wage.

Where the employer provides other accommodation, the employer may not deduct more than £4.82 per day, from the agricultural worker's minimum wage, if the worker has worked for a minimum of 15 hours for their employer in that week. No deductions should be made if the employee works under the 15-hour threshold.

The Panel has not proposed an increase to these rates since its establishment. Having considered the economic conditions within the sector at this time the Panel have proposed these are increased in line with the percentage increase of the National Living Wage bringing the rates for accommodation offset closer to the permitted deduction under the National Minimum Wage legislation

Question 3: Do you agree with the proposed uplift for the Accommodation Offset Allowances?

Question 4: If not, please give details of what you feel is appropriate

3. Changes of wording within the Agricultural Wages (Wales) Order 2023

Contract of service

Article 2 defines terms used within the proposed AWO.

The Agricultural Advisory Panel for Wales proposes the term '*contract of service*' is amended to remove the words 'of service.' The rationale behind this amendment is to ensure inclusion of agency workers and workers employed by gang masters who may not be engaged under a *contract of service* directly with the employer, but under some other form of contract for services.

This change would apply to the definitions for 'Basic Hours', 'Guaranteed Overtime', 'Working Time' (Article 2), 'Employment Ending During Sickness Absence (Article 26), Holiday Pay (Article 37) and Public Holidays and Bank Holidays (Article 38).'

Interpretation of employment

In accordance with the proposed amendment to the term '*contract of service*' outlined above, the Panel proposes to amend the definition of employment under Article 2 of the proposed AWO as follows:

“employment (“cyflogaeth”) means individuals engaged as employees,

workers, agency workers and workers employed by gangmasters and “employed” (“a gyflogir”) and “employer” (“cyflogwr”) are to be construed accordingly;”. ”

The Guidance to the AWO makes it clear that workers employed by gang masters and employment agencies are covered by the Agricultural Minimum Wage. The Panel considered that this should be expressly stated in the interpretation of employment under the proposed AWO to ensure that agency workers and those employed by gangmasters fall within the definition.

Minimum rates of pay for overtime

Article 13 sets out the provisions made within the Order for the minimum rates of pay for overtime.

The Panel identified that the article could be open to an interpretation whereby agricultural workers could be paid a higher hourly rate than is prescribed under Article 12 and Schedule 1 of the Order by agreement with their employer, but the drafting of the overtime provision could mean that the employer chooses or is obliged to use the agricultural minimum hourly rate as their basis for calculating overtime pay. The Panel did not consider this to be the intention of the overtime provision and that agricultural workers should be paid overtime based upon their actual hourly rate.

In order to clarify the provision, the Panel are proposing to amend the article to read:

“ “Agricultural workers must be remunerated by their employer in respect of overtime worked at a rate which is either equivalent to the minimum hourly rate of pay prescribed in Article 12 or the hourly rate of pay that has been agreed between the agricultural worker and the employer whichever is

higher” ”

Protection of pay

Article 15 of the proposed order sets out provisions to protect the pay of agricultural workers who were employed before the 22 April 2022 who may have suffered a reduction in their hourly rate as a result of being assimilated into a lower grade due to changes in the grading structure.

The current pay protection provisions could be interpreted as *requiring* employers to freeze an agricultural worker’s pay at their rate of pay on 22 April 2022 until the minimum hourly rate specified in Schedule 1 of the AWO reaches or exceeds that rate of pay, thus preventing an employer and an agricultural worker from agreeing an increase in their pay.

This provision was drafted by the Panel to ensure no detriment was suffered by an agricultural worker as a result of assimilation onto a new grade, it was not intended to prevent employers from awarding pay increases to employees by agreement.

The Panel proposes therefore, that this article is amended as follows:

“ “Agricultural workers employed before 22 April 2022 who suffered a reduction in their minimum hourly rate as a result of their assimilation to a lower grade or category or a lower minimum rate of pay as specified in the Table in Schedule 1 of the Agricultural Wages (Wales) Order 2022(1) must either continue to have their pay protected at their rate of pay on the 22 April 2022 until the minimum hourly rate specified in the Table in Schedule 1 (as amended from time to time) which is applicable to their grade reaches or exceeds their rate of pay on that date, or have their salaries increased by mutual agreement.” ”

Determining the amount of agricultural sick pay

Article 23 sets out the requirements for employers to pay Agricultural Sick Pay to their employees.

The current wording of Article 23(1) states

“ Agricultural sick pay is payable at a rate which is equivalent to the minimum hourly rate of pay prescribed in article of, and Schedule 1 to, this Order applicable to that grade or category of agricultural worker.” ”

The Panel believe this could be interpreted as requiring an employer to pay agricultural sick pay at the minimum rate prescribed in article 12, Schedule 1 of the Order. This would not take into account a situation where the agricultural worker is paid an hourly rate in excess of the agricultural minimum wage rate prescribed in article 12 Schedule 1 and the employer wished to pay agricultural sick pay at that higher rate.

To clarify this provision, the Panel propose the wording of Article 23(1) is amended to:

“ Agricultural sick pay is payable at a rate which is equivalent to at least the minimum hourly rate of pay which is equivalent to the minimum hourly rate of pay prescribed in article 12 and Schedule 1, to this Order as applicable to that grade or category of agricultural worker”. ”

Question 5: Do you agree with the proposed amendments being made to the wording within the Agricultural Wages (Wales) Order 2023?

Question 6: If not, what changes would you propose?

Question 7: Do you have any further comments to make regarding the Agricultural Wages Order?

Questions

Question 1

Do you agree with the proposed rates of pay and subsequent allowances for the financial year 1 April 2023?

Question 2

If not, please give details to what you feel is appropriate

Question 3

Do you agree with the proposed uplift for the Accommodation Offset Allowances?

Question 4

If not, please give details of what you feel is appropriate?

Question 5

Do you agree with the proposed amendments being made to the wording within the Agricultural Wages (Wales) Order 2023?

Question 6

If not, what changes would you propose?

Question 7

Do you have any further comments to make regarding the Agricultural Wages Order?

Question 8

Please provide information about yourself or your organisation. If possible, include details about the occupation or sector you are involved in, your workforce if you are an employer (including number of AMW workers, their grades and rates), and anything else you think is relevant.

How to respond

Comments on these proposals should be submitted before 20 October 2022 so the Panel may submit advice to Ministers as required by the Agricultural Sector (Wales) Act 2014.

Please submit your response in any of the following ways:

- **Complete our online form**
- **Download**, complete our online form and email AAP@gov.wales
- **Download**, complete our online form and post to:

Agricultural Advisory Panel Manager
Welsh Government
County Hall
Spa Road East
Llandrindod Wells
LD1 5LG

Your rights

Any response you submit will be seen in full by Welsh Government staff dealing with matters relating to the Agricultural Advisory Panel. Responses will also be shared with the Panel, and where the Welsh Government or the Panel undertakes further analysis of consultation responses then this work may be carried out by third party contractors (e.g. a research organisation or a consultancy company). Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tell us.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer

Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Information Commissioner's Office

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 0303 123 1113

Website: ico.org.uk

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to

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make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data. In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than 3 years.

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