




Llywodraeth Cymru
Welsh Government

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Minutes of the meeting held online.

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Contents

Present

Item 1 – Housekeeping / Apologies / Conflict of Interest

Item 2 – Chair's update

Item 3 - Outstanding Actions / Approval of Minutes from AAP 32

Item 4 - Update on the Agricultural Wages Order 2022 (2021/2022)

Item 5 - Update on the Agricultural Wages Order 2022(2) (2022/2023)

Item 6 - Seasonal worker wages

Item 7 – Any other business

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Present

Chair – Dr Nerys Llewelyn Jones

Independents - Steve Hughson, Janatha Stout

Unite – Brian Troake, Ivan Monckton

FUW – Darren Williams

NFU Cymru – Will Prichard

Panel Legal Adviser - Helen Snow

Welsh Government - Ryan Davies (Panel Manager), Sian Hughes

Secretariat – Dan Ricketts

Item 1 – Housekeeping / Apologies / Conflict of Interest

There were no apologies and no new conflicts of interest to report.

Item 2 – Chair's update

The Skills Development and Training sub-committee meeting scheduled for 8 February did not take place as planned due to a lack of available participants. The next meeting is scheduled for 24 May 2022. A couple of members stated they would not be able to attend so it was agreed for a Doodle Poll to be sent out to ask members regarding availability for week commencing 16 May.

ACTION POINT 1 – Dan Ricketts to send Doodle Poll out to the Skills Development and Training sub-committee members regarding availability for a meeting week commencing 16 May.

The Chair had met Vicky Jones (Welsh Government Head of Agriculture – Sustainable Development Division) – the “data issue” raised in previous meetings was discussed. An idea under discussion is for a bespoke survey to be undertaken. This would be drafted by the Panel and be undertaken at the Royal Welsh Show 2022 in July. The draft survey would be discussed at a future meeting and would need to be approved by the Panel.

The Chair stated she had experience of getting a questionnaire / obtaining data in a very short space of time. If the data could be obtained during the Royal Welsh Show it would be advantageous for the next round of negotiations.

The Panel agreed with this approach.

It has almost been a year since the “new” Panel was formed in April 2020 so it would be beneficial for a review to take place on the workings of the Panel. The Chair and the two independent members would be having appraisal reviews but feedback would also be asked for from all Panel members individually. This would help in learning from the past year and also looking forward to future years.

It was also important the Panel receive training / a refresher with regards to the Nolan Principles as well as the responsibilities and obligations of Panel members.

Item 3 - Outstanding Actions / Approval of Minutes from AAP 32

The minutes were approved by the Panel.

The outstanding actions from AAP 32 were discussed:

- The spreadsheet regarding possible back to agricultural workers was shared on screen with Panel members

ACTION POINT 2 – Dan Ricketts to distribute calculations of potential back pay to all Panel members.

Due to the delays in the Order being finalised many businesses would have given a wage increase which could be higher than the rates in the Order so is the total pay averaged over the year?

Helen Snow confirmed that technically the minimum wage is calculated as the hourly rate over the pay period. If the employer had increased wages during the year and when they calculated the hourly rate over the pay period this was above the minimum rate as set out in the Order then arguably they were not in deficit and would not be required to pay backpay. However, the workforce may argue for retrospective pay from a fairness perspective.

Darren Williams was unhappy with the section in the draft guidance regarding back pay and the explanations as to why the delays had occurred. It was agreed that extra information would be given in the introduction of the guidance as well

as in the section regarding back pay.

ACTION POINT 3 – Sian Hughes to redraft the introduction of the guidance to give further information on the delays to the Order.

ACTION POINT 4 – Amended wording of the guidance to be sent to the Panel for approval via email.

A “Lines to Take” document also needed to be prepared for when the 2022(1) Order is published.

ACTION POINT 5 – Nerys Llewelyn Jones to draft a “Lines to Take” document for use by the respective organisations when the Agricultural Wages Order 2022(1) is finalised and published.

Panel members had been asked to give information regarding:

- what data is needed / desirable?
- how do we collect that data?

This was now required as a matter of urgency as the information submitted would be used to start drafting the survey document.

ACTION POINT 6 – Unite / FUW / NFU Cymru to write in to the Panel by 31 March 2022 giving information regarding what data is needed / desirable and how do we collect that data.

The Communications Plan regarding the Order would be completed ready for when the Order comes into force and is published.

ACTION POINT 7 – Nerys Llewelyn Jones to draft a Communications Plan and circulate to Panel members.

As the meeting of the Skills Development and Training sub-committee did not take place in February, Qualifications Wales would be asked to come and give a talk in the meeting scheduled for week commencing 16 May.

ACTION POINT 8 – Nerys Llewelyn Jones to invite Qualifications Wales to talk to the Skills Development & Training sub-committee.

Item 4 - Update on the Agricultural Wages Order 2022 (2021/2022)

It was confirmed the Counsel General had approved retrospectivity of the Order so it comes into effect from 1 April 2021. The final stages are now being undertaken to submit advice to the Minister as well as finalising the Order, guidance and two Impact Assessment documents.

An error had been made in the submission of the Order in December 2020 - the rates for Grades B1 to B3 differed from the rates in the consultation of October 2020. These had been converted back to the consulted rates.

The pay rate for Apprentice Year 2 and beyond (under 19 years old) was also discussed. The rate in the submitted Order was £4.55 which at the time was the NMW for under 18 year olds. This had not been uplifted from April 2021. The consultation of October 2020 suggested this rate would be uplifted and the

Panel have agreed this should have been updated to £4.62 in the Order.

Some other minor amendments had also been made to the Order by Welsh Government Legal Services.

All amendments were approved by the Panel.

An article would appear in the Spring Update published by Welsh Government and the Chair had provisionally talked to Farming Connect about undertaking another webinar regarding the Order. There would also be a Press Release as well as the Lines to Take and Communications Plan as previously discussed.

ACTION POINT 9 – Sian Hughes to distribute to Panel members the article which will be published in the Welsh Government’s Spring Update.

Item 5 - Update on the Agricultural Wages Order 2022(2) (2022/2023)

Consultation responses

Seven responses had been received to the consultation on the 2022(2) Order which were discussed by the Panel.

One response suggested there was a rethink as to whether the Panel should propose any changes to the minimum wage rates due to the rises in the cost of energy. However, the view of the Panel was that the rising costs affects both the

employer and employee so it was not appropriate to renegotiate at this time.

The Panel were advised that, when submitting the Order to the Minister, they would need to show the consultation responses have been carefully considered and any decisions made would need to be justified.

The Chair asked for the Panel to consider again the recommendations from the Fair Work Commission and it should be part of an Action Plan going forward.

There was also a discussion around how to make the consultations more meaningful. Questions are raised with each Order around the consultation process and it is an important part of developing Government Policy. There is flexibility on the method of consultation.

The Chair stated the consultation process had to be more robust and efficient. She asked whether it was possible to either write a paper or arrange for a training session on how to deal with consultation responses to be delivered to the Panel. She also asked for a paper on the different consultation options.

ACTION POINT 10 – Sian Hughes to explore a training package for the Panel with regards to dealing with consultation responses.

ACTION POINT 11 – Sian Hughes to write a paper outlining the consultation options available to the Panel.

It is normal practice for a “Summary of Responses” to be published on the website – this should be looked at going forward.

There was an overall positive response to the inclusion of rest breaks within the

Order.

A question was asked in one response as to whether Agency workers were outside the scope of the Order. Helen Snow stated there is some ambiguity in this and, although the guidance expressly states they are covered, the language in the Order will need to be amended to clarify agency workers and those employed by Gangmasters (under a “contract for services”) are included under the Agricultural Wages Order along with those workers employed under a “contract of service”. This will be taken forward in the 2023 Order.

ACTION POINT 12 – Helen Snow to undertake work to clarify the wording of the 2023 Order with regards to agency workers and those employed by gangmasters.

Another response asked for greater transparency around compliance monitoring and enforcement in relation to the order.

ACTION POINT 13 – Secretariat to include a standing agenda item each quarter regarding Wages Order compliance cases.

The Chair also asked for a paper on the Panel’s role in relation to non-compliance of the Order.

ACTION POINT 14 – Ryan Davies to write a paper outlining the Panel’s role with regards to non-compliance of the Agricultural Wages Order.

It was also noted there was no telephone number in the 2021/2022 guidance to report non-compliance. It is important that, for accessibility, a telephone number is provided. The guidance will be amended accordingly and work will be

undertaken to improve the process of reporting cases of non-compliance.

ACTION POINT 15 – Sian Hughes to explore options regarding the reporting of suspected non-compliance cases.

Other updates

The Apprentice Pay Grades in the 2022(2) Order are different to those in the 2022(1) Order in that they have been changed to reflect the National Minimum Wage age bands.

The Panel agreed the pay bands should reflect the National Minimum Wage bands.

The Panel were asked by the Chair to consider the confirmation of the proposals as consulted upon for the Agricultural Wages Order 2022(2).

Proposal – are the Panel content to reaffirm the proposals consulted upon and to submit the draft Agricultural Wages Order 2022(2) to the Minister?

YES – 4

NO – 2

The Order will not be in place by 1 April 2022 so the Panel will need to consider whether to ask for the Order to apply retrospectively. This will be discussed by the Panel at the next meeting when the timeframe is better known. The Panel agreed that retrospectivity cannot be seen as normal practice and the process needs to be shortened.

Item 6 - Seasonal worker wages

Due to time constraints this will be moved on to the next meeting.

Item 7 – Any other business

There was a request for the Microsoft Teams link for future meetings to be sent out the day before the meeting to avoid any access issues and also for the associated paperwork to be sent out earlier – especially when there are many documents.

A letter had been received on the morning of the meeting from Sustain Wales asking to meet with the panel to discuss Welsh Government Fair Work Provisions and the Real Living Wage.

ACTION POINT 16 – Letter from Sustain Wales to be distributed to Panel members for discussion at the next meeting.

Will Prichard stated Panel members were having to give more of their time on a regular basis with regards to meetings and suggested the amount of recompense needed to be reviewed.

Next meetings

AAP – Tuesday 5 April (Microsoft Teams)

AAP – Tuesday 31 May at 10am (it is hoped this will be a face-to-face meeting)

SDT Sub Committee – w/c 16 May (date TBC)

The Chair thanked everyone and closed the meeting.

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