



Llywodraeth Cymru
Welsh Government

PUBLICATION

Agricultural Advisory Panel meeting: 5 April 2022

Minutes of the meeting held online.

First published: 5 April 2022

Last updated: 5 April 2022

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Present

Chair – Dr Nerys Llewelyn Jones

Independent - Janatha Stout

Unite – Ivan Monckton, Jonathan Davies

FUW – Darren Williams

NFU Cymru – Dylan Morgan

Panel Legal Adviser - Helen Snow

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

Secretariat – Dan Ricketts

Apologies

Steve Hughson (Independent)

Will Prichard (NFU – Dylan Morgan attended)

Brian Troake (Unite – Jonathan Davies attended)

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 Chair had received a letter from the Minister for Rural Affairs, North Wales & Trefnydd dated 9th March specifically asking the Panel to consider the Fair Work Commission's Report and the two recommendations covering the agricultural sector and the Panel. This will be looked at for the 2023 Order. A formal reply

was to be provided to the Minister by 30th September 2022.

It was clarified the Minister wants the Panel to show the report has been considered and advise the Minister on the recommendations made in the report.

Darren Williams stated the report had already been considered when it was first published (2019) and the outcome was that Unite represent that side of the argument in each round of negotiations.

Ivan Monckton stated it was put forward as part of Unite's proposals but it is not discussed and it is dismissed out of hand. The Minister is saying the Panel has to give it some serious consideration.

A request was made that the minutes from previous meetings where this was discussed are found.

ACTION POINT 1 – Dan Ricketts to find minutes from previous meeting where the Fair Work Commission's Report was discussed and distribute to Panel Members.

Item 3 - Outstanding actions / approval of minutes from AAP 33

The minutes were approved by the Panel.

The outstanding actions from AAP 33 were discussed:

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

This Action Point will be forwarded to the next meeting, however the “Code of Practice on Consultation” document had been distributed to Panel members prior to the meeting.

Ivan Monckton stated this document was for when the Government are consulting. The Panel are independent and so this goes above and beyond what the Panel should be expected to do. For example, the document states a minimum consultation period of two months. This is not done at present and there are already difficulties regarding the timescales of publishing the Order. The document can be used as the basis for Government thinking on consultations but it is not appropriate for the Panel especially considering the number of responses to each consultation. This would set even longer timescales and is “over the top”.

Sian Hughes stated she would agree if the Panel were purely an advisory body but the Panel drafts the Agricultural Wages Order. The legislation has to be lawful, reasonable and rational and the public have to be given sufficient opportunity to comment on it and understand the basis of the proposals.

The Chair said the Code of Practice is a “best practice” guidance document – should the Panel have their own policy document outlining the consultation standards? If the Panel are putting forward legislation it has to follow standards and stand up to challenge.

ACTION POINT 2 – Sian Hughes to explore a training package for the Panel with regards to dealing with consultation responses.

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

This Action Point will be forwarded to the next meeting as it will be looked at for the 2023 Order.

ACTION POINT 3 – Helen Snow to undertake work to clarify the wording of the 2023 Order with regards to agency workers and those employed by gangmasters.

Item 4 - Seasonal worker wages

Helen Snow gave an overview of the T5 Temporary Seasonal Worker immigration route for horticulture workers (which also covers forestry). The policy is applicable UK wide. If a sponsored body brings seasonal workers into the UK via the T5 visa route after 6 April 2022 they must be paid a minimum of £10.10 per hour or £25,600 per year (the same level as a salary requirement for a skilled worker). It is quite technical how employers calculate the rate (what is and what is not included and how overtime impacts on the calculation)

The document states “If the applicant is being sponsored to work more than 48 hours a week, only the salary for the first 48 hours a week will be considered towards the salary threshold of £25,600”

Dylan Morgan said that England does not have set agricultural wages so how does this Scheme work with those countries that do? The Seasonal Worker Scheme is above some of the lower pay rates of the Agricultural Wages Order but other terms & conditions are much higher than in England.

Helen Snow said this was an issue previously raised around agency workers. The Association of Labour Providers (ALP) has also asked this question to DEFRA as it would appear consideration has not been given to the agricultural wages schemes outside England. As it is written at present, if a worker is employed in agriculture in Wales they are covered by the Order including the wage rates and other conditions but must also receive a minimum hourly rate of £10.10 or a guaranteed salary of £25,600. If they are a Grade D or E worker they will receive the higher minimum pay rate as set out in the Order as these

are above £10.10.

It was stated this should be an alarm bell to the Panel that wages are being set at a level way below what the UK Government consider a migrant should receive if they are undertaking the same duties.

However, workers can't have both a Wages Board supporting with all the advantages in Wales and a higher rate of pay as well. For example, the Accommodation Offset in Wales is a lot lower than in England. There are fundamental differences between the two systems that need highlighting.

The Chair said it was her understanding that the sole reason behind the Scheme is to encourage workers to come from abroad knowing they are guaranteed a rate of pay of £10.10 per hour and that it does not extend to what other benefits there may be. The differences should be highlighted to the UK Government. It is part of the Panel's role to raise awareness of such issues.

It was a policy that would need to be considered in future Orders due to the potential employment law risks.

It was asked how many people this would affect in Wales. Some work was undertaken during the pandemic around this – the demand is much less in Wales compared to Scotland and England where there are bigger horticultural sectors. In Wales, there is only a real demand for seasonal workers in the food processing sector. A seasonal workers pilot scheme was undertaken by DEFRA and no seasonal workers were placed in Wales through this scheme.

There was a suggestion this would have to be approved by Parliament and usually this would involve consulting with Welsh Ministers as it impacts on the devolved nations. It was confirmed nothing had been seen by the Agri Wages team.

ACTION POINT 4 – Helen Snow to draft a specific guidance note on the T5

Temporary Seasonal Worker immigration route and how it dovetails with the Agricultural Wages Order in Wales.

ACTION POINT 5 – Once approved by the Panel, the guidance note was to be sent to UK Government to highlight differences.

Item 5 - Enforcement cases report

The relevant legislation that covers enforcement cases had been distributed to Panel members prior to the meeting.

An overview was given of the enforcement process once a complaint is received by Welsh Government. Cases are usually resolved with an agreement between the employer and the worker – there is yet to be a case that has gone any further.

There is one active case at present which involves a dispute over the grade being worked and the relevant wage rate.

Work is also being undertaken on the enforcement process to ensure it is fit for purpose.

Item 6 – Sustain Wales

A letter from Sustain Wales regarding the Living Wage Steering Group for Mid & West Wales had been circulated to Panel members before the meeting.

The Chair stated this is something that will need to be looked at when discussing the 2023 Order although Ivan Monckton requested that if they are asking to come and talk to the Panel it needs to be done before then.

It was agreed that NLJ would meet with Sustain Wales and report back to the Panel.

ACTION POINT 6 – Nerys Llewelyn Jones to meet with Sustain Wales to find out more information and report back to the Panel.

Item 7 - Update on the Agricultural Wages Order 2022 (2021/2022)

The Order was laid on 1 April and will come into force on 22 April 2022. The finalised guidance document was sent to the Panel prior to the meeting.

It was asked why the date for publishing an article in the Spring Update was missed. This was crucial information to go out to employers and Welsh Government knew the publishing date. The next time farmers will hear about this will be the Royal Welsh Show.

Sian Hughes said it had previously been stated the article for the Spring Update was subject to copy deadlines and the Minister had not approved the Order by this date. However, a written statement will be issued stating the Minister has signed the Order and directing people to the guidance on the website. There will also be an article in Gwlad which goes out fortnightly as well as in the Summer Update in July. Information will also be published via the Welsh Government social media channels.

The Chair had drawn up a draft Communications Plan and “Lines to Take” document – these had been distributed to Panel members before the meeting as the information on the Order needs to be disseminated as far and wide as possible. She had also arranged an interview on the radio for week commencing 11 April and is also looking at undertaking another Farming Connect webinar.

Darren Williams stated he was uncomfortable the current wording of both the guidance and the Lines to Take document did not say the decision regarding retrospectivity was not a unanimous decision of the Panel.

Sian Hughes said the guidance now simply states the rates have been backdated to 1 April 2021 and all references to the “Panel’s recommendations” have been removed. Panel members had been asked for revised wording to this section and, apart from Darren, no responses had been received so the decision was made to remove the sentences in question. Minutes of AAP meetings are published on the AAP webpages and these give details of votes taken. Details will also be in the Annual Report once that is published. The “Lines to Take” are for the Panel to use as they please via their communication channels.

A request was made for extra information to be included in the table within the Lines to Take to include the proposals for the 2022(2) Order (for 2022/23). It is important for employers and workers to know as much information as possible about pay rates and to make it as simple as possible. A one-page sheet would be the best way to do this.

ACTION POINT 7 – Dan Ricketts to update the table in the “Lines to Take” document to include information regarding 2022(2) Order and the raise in NMW / NLW from 1 April 2022.

The Chair stated the communications need to be sent as soon as possible and before the Coming into Force date of 22 April. The copy deadline for FUW May publications was 15 April.

It was clarified the Lines to Take were from the Panel and for them to use as they choose. The Welsh Government will be issuing a written statement and other communications which may take a little longer to be approved and agreed by the Minister but they will be published as soon as possible.

Item 8 - Update on the Agricultural Wages Order 2022(2) (2022/2023)

An issue was raised around the consultation that had taken place in January 2022. The rates for “Other Allowances” were incorrect in the consultation as they were the rates for 2019 not 2022(2). These need to be corrected before the Order can be submitted to Welsh Government. The proposal was for the correction to be circulated to the Consultation Distribution list giving a 2-week window in which to respond. There were no responses regarding these rates in the first consultation.

The Panel approved this proposal unanimously.

The Chair stated her hope was that as the proposals for the 2022(2) Order were rate changes only there should not be the issues as there were for the previous Order. However, the Order will probably not be in place until the end of July which brings retrospectivity into question. There was wording that covers retrospectivity within the Order so an understanding of the Panel’s position is required before the Order can be submitted to the Minister.

It was stated there cannot be a repeat of the situation with the last Order. The Chair said that by putting the information regarding the proposed wage rates in the “Lines to Take” the industry will be aware of the rates.

If the Order was not made in June it could well be the latter part of 2022 (due to Welsh Government summer recess) and so until the timescales are confirmed it was not possible to vote on retrospectivity at this meeting.

Unite would be voting for the Order to be applied retrospectively and hoped that just because of the problems with the last Order this would not be a contentious issue.

The Panel felt a vote on whether to apply for the Order to be made retrospectively could not be made at this meeting. The Chair stated that if a vote was required before the next scheduled meeting an emergency meeting would be called for this specific issue.

The Panel agreed with this proposed course of action.

Next scheduled meetings

AAP – Tuesday 31 May at 10am

SDT Sub Committee – Monday 16 May at 2pm

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