



Llywodraeth Cymru
Welsh Government

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Minutes of the meeting held online.

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Present

Chair – Dr Nerys Llewelyn Jones

Independents - Janatha Stout, Steve Hughson

Unite – Brian Troake

FUW – Darren Williams

NFU Cymru – Will Prichard

Panel Legal Adviser - Helen Snow

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

Apologies

Ivan Monckton (Unite)

Item 1: Housekeeping/apologies/conflicts of interest

Apologies had been received from Ivan Monckton.

Item 2: Chair's update

Sustain Wales

The Chair reported on her meeting with Sustain Wales to discuss their recent correspondence regarding the Real Living Wage (RLW). This organisation would like to encourage as many employers as possible in Wales to pay the RLW across all industry sectors and was seeking views on whether the Panel would be willing to support their endeavours. Sustain Wales are funded by Welsh

Government however this is not their only area of interest – other areas include environmental sustainability and natural resources.

Unite offered their full support regarding payment of the RLW, especially by those businesses receiving public subsidies.

Will Prichard raised that the Panel would have to exercise caution as not to prejudice its independent status as it may be seen that pressure was being exerted on the Panel.

Darren Williams was also concerned about the lack of data about how many within the industry are paying the RLW and above. He also questioned the independence of the Panel if they were to align with the goals of Sustain Wales.

The general consensus was the Panel should not be subject to lobbying. Darren Williams said it was not the Panel's remit to force a position. This should be up to each individual business and whether it was affordable for the business. This should be a voluntary code which businesses can sign up to if they wish.

It was asked what Sustain Wales were asking for - a link within the guidance was feasible for 2023 which would allow the industry to make their own decision, however, questioned whether this would be enough to satisfy Sustain Wales's ambitions.

An invitation to a Sustain Wales event had been circulated to the Panel if any members were interested in attending.

ACTION POINT 1 – Nerys Llewelyn Jones to consider drafting a press release setting out how the Panel and Sustain Wales could work together to promote the Real Living Wage.

Sub Committee on Skills, Training and Development

The minutes from the meeting held on 16 May had been distributed to members. The Committee's proposal to hold an event aimed at developing a strategy was discussed.

ACTION POINT 2 - Members to give thought as to who should be involved and how to engage those who do not currently work within the industry.

Item 3: Outstanding actions/approval of minutes from AAP 34

The minutes from AAP Meeting 34 were approved without amendment.

All the Action Points had either been achieved or were in progress.

Seasonal Worker Visa Route

A question was raised regarding the paper on Seasonal Temporary Workers and the requirement to pay £10.10 per hour. An example should be used where a farm bordering England and Wales may potentially have to adhere to three different wage regulations. Helen Snow explained this was for Temporary Seasonal Workers only and not for domestic employees or those participating in the EU Settled status scheme. It was linked to non-devolved immigration policy for the horticultural sector only. The rate of pay was set at a higher rate to discourage the use of this labour source and focus on domestic labour.

The Panel agreed the paper could be submitted to the UK Government with the addition of the above example.

Discussions were held regarding the issue with cross border holdings and the fact this has never been resolved fully to how it affects payment of the Agricultural Minimum Wage.

ACTION POINT 3 – Ryan Davies to share Rural Payments Wales policy on cross-border farms in delivering BPS.

ACTION POINT 4 – Nerys Llewelyn Jones to circulate letter received from the Minister regarding how the Panel could deliver the outcomes of the Fair Work Commission report.

Item 4 – Update on The Agricultural Wages (Wales) Order 2022(2)

The Panel were updated on the current position. The Order has been submitted, and checked over by Legal Services, who have made a couple of amendments which have been agreed by the Chair and Helen Snow. Welsh Government are working hard to submit the Order to the Minister before the summer recess on 15 July. However, the Regulatory Impact Assessment needs to be completed and cleared, so timings could be subject to change.

If it was submitted by this date the Order could come into force during recess subject to Ministerial approval.

The Panel would need to decide on whether to apply for retrospective effect or not in order to continue the process within this challenging time frame.

Darren Williams passed the comment that due to the long retrospective period applied for and approved, the farming industry should be given a period of grace.

When asked whether there were any cases coming forward from industry where there was a hardship issue in paying back pay, Will Prichard had recently had dealings with a case, and the view of NFU Cymru would be to push back on retrospection to prevent this from becoming the norm.

The Chair confirmed this would not be the norm, but the difficulties with the 2022 (2021) Order had created significant delays for the 2022(2) Order. The 2023 Order should fall back into line with normal proceedings.

Brian Troake, although empathising with the farming unions in the fact they have had to find money for back pay settlements, made the point that by not offering retrospection would seriously disadvantage workers, especially in the current cost of living crisis.

Darren Williams responded that it was only a small number of people the back pay issue affected. Brian Troake replied if that was the case it would be unreasonable not to accept retrospection if those affected were so few.

The Chair proposed three options:

- Option 1 – the Order comes into force in August 2022 with no retrospectivity;
- Option 2 – the Order comes into force with retrospective effect to 1 April 2022; or
- Option 3 – the Order comes into force using a date in between the two

The Farming Unions stated they would be happy with the Option 3 compromise; however, this was refuted by Unite who remained of the view it would be unreasonable not to go back to 1 April due to the cost of living issue. It would also add to the complexity of the Order.

It was also pointed out there would have to be a very good justification for what would be seen as an arbitrary date.

Will Prichard proposed rather than use an arbitrary date go with 60 days prior to

the Coming into Force date. Brian Troake felt this may be an issue for workers if the Order does not come into effect until November. This would have the potential to undo the positive work to date by adding another layer of complexity.

The Chair proposed the following vote:

Does the Panel support the motion for retrospective effect of 60 days before the Coming into Force Date?

Support – Farming Unions

Oppose – Unite

(Only one vote from each side was cast due to Ivan Monckton not being present)

The independent members were asked for their views.

The meeting was paused at this point to enable both independent members to have a private discussion.

The meeting reconvened and Steve Hughson stated the following:

“We must avoid any calls for retrospection in the future; and this needs to be put to the Minister. We are aware from discussions today that the retrospection only affects only a small number of employees and its fair to assume employees should have an uplift in pay due to the cost of living. It is apparent this situation we find ourselves in is unfortunate. There is also an issue of unfairness who get an uplift or not.

Therefore, the independent members believe that an application for retrospection to the 1 April 2022 should be made. However, any future vote for retrospection would be sided with the farming unions in order to draw a line in the sand and prevent retrospection becoming the norm”

Janatha Stout confirmed she was happy with this statement and reflected their discussion. She also stated she would not vote for retrospection in any future

years.

The Chair proposed the following vote:

It is the position of the Panel to apply for retrospective effect to 1 April 2022

For: Independent & Unite

Against: Farming Unions

(Only one vote from each side was cast due to Ivan Monckton not being present)

Item 5 – Timeline for the 2023 Order

The Chair requested the papers from both the employer and employee sides are submitted for the next meeting scheduled for 28 June. This would give enough time to negotiate the areas of the Order which do not include the wage rates. For example, defining how the regulations are determined for cross-border holdings. Wage rates could be discussed and negotiated at the September meeting when the NMW / NLW rates are released by the UK Government.

Will Prichard acknowledged this however suggested that as some items are interlinked with wage rates it would not be as easy as it first seemed.

Unite agreed this would be a sensible approach and would allow the Panel to look at the wording of certain areas within the Order which may confuse or need clarifications.

ACTION POINT 5 – Ryan Davies to establish when the NMW / NLW rates for 2023 will be released

The Chair suggested the table which was used for the 2022(2) Order be used again and each side looks at each clause and details any changes that they feel need to be made. This could be done in stages – half for the June meeting and

half for the July meeting. Members were in general agreement however this may put pressure on their respective policy teams.

ACTION POINT 6 – Nerys Llewelyn Jones to email the policy teams of the Unions to ensure the timeline for submitting papers and completing the table regarding the clauses of the Order could be achieved withing the timeline.

Item 6 – Data gathering - plan of action

The Chair would have a draft questionnaire for the June meeting for discussion, which can be used on or offline with a plan to have results by September's meeting.

Item 7 – Fair Work Commission Report

The Panel discussed the letter received from the Minister regarding the Fair Work Wales report and the two recommendations which were specifically targeted at the Panel. The Minister has asked for a formal response by September. Brian Troake pointed out the under 25 rate is no longer in the National Minimum Wage legislation as the paybands have been amended.

ACTION POINT 7 – Nerys Llewelyn Jones to forward the letter from the Minister regarding the Real Living Wage to Panel Members

It was stated Tony O'Regan (Aberystwyth University) was supportive of adding questions into the Farm Business Survey however this was not sanctioned by Welsh Government. Brian Troake commented that if the Panel instigated the RLW there would be no concern regarding data or reporting to the Minister.

The Chair suggested she wrote to the agricultural consultancy companies

operating in Wales to see if they already hold any data on employment which may help to address this area.

ACTION POINT 8 – Nerys Llewelyn Jones to contact consultancy companies in Wales to seek assistance on data collection for employment statistics

Next scheduled meetings

AAP – Tuesday 28 June at 10am.

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