



Llywodraeth Cymru
Welsh Government

PUBLICATION

Agricultural Advisory Panel meeting: 5 and 6 September 2022

Minutes of the meeting held at Hafod y Hendre, Royal Welsh Showground, Builth Wells.

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Present

Chair – Dr Nerys Llewelyn Jones

Independents – Steve Hughson, Janatha Stout

NFU Cymru – Dylan Morgan, Abi Reader (Day 1 only)

FUW – Darren Williams, Nick Fenwick

Unite – Jo Galazka, Ivan Monckton, Bridget Henderson

Legal Adviser – Helen Snow (Geldards)

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

Secretariat – Dan Ricketts

Guest Speakers (Day Two)

Neil Surman, Ashleigh Harper, Rob Hobbs – Welsh Government Social Partnership Division

Day one - Item 1: Housekeeping / Apologies / Conflicts of Interest

Introductions were made and the chair welcomed everyone to the meeting. Jo Galazka has replaced Brian Troake as a Unite representative on the Panel

Item 2: Chair's update

The priority for the meeting over the next two days is the Agricultural Wages Order 2023. By the end of the meeting tomorrow the Panel has to be in a position where there is agreement on all issues and the Order is ready to go out to consultation. It is essential the Order is in place by 1 April 2023 and there is

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an opportunity this year to do that.

Item 3: Outstanding actions/approval of minutes from AAP 36

AP 1 – Nerys to write a letter of thanks to Will Prichard on behalf of the Panel

This has been completed – a letter of thanks has also been sent to Brian Troake.

AP 6 – Sian Hughes to draft an article for the Welsh Government Autumn Update scheduled for November 2022

AP 7 – Sian Hughes to contact Welsh Government Comms team regarding publicising the 2022(2) Order via social media and GWLAD

Welsh Government are working with the Comms team on this as well as a written statement from the Minister.

AP 9 – Sian Hughes to draft a paper regarding options on data collection to be discussed at the next AAP meeting in September

Sian Hughes gave a verbal update – looking at all the options available but there are two main avenues being considered:

- Undertaking a survey via RPW Online
- Make better use of existing data such as that from ONS / HMRC

Welsh Government are looking at resources to help design the survey / analysing results etc. Timing is also a key issue to maximise responses although it is important to get any results by August 2023 to help inform the Order for 2024.

Points raised by the Panel:

- The danger of using RPW Online is it will only capture results from agriculture and not forestry or other areas – it is important to capture all areas covering the Order.
- Keep the survey relatively simple to start with and then develop in future years – it would then not be too onerous to complete at the same time as the Single Application Form (March to May). However, they must be seen to be completely separate and the survey also needs to provide enough information to make it relevant.
- The Panel have previously responded to a request as to the information required by the Panel / questions to be asked.

ACTION POINT 1 - Sian Hughes to provide a further update regarding options on data collection at the next AAP meeting in October

The minutes from AAP 36 were approved by the Panel.

Item 4: Real Living Wage Report

This will be discussed on Day 2 of the meeting.

Item 5: Agricultural Wages Order 2023

A) Proposed Amendments to Agricultural Wages Order 2023

Following the discussions at the previous meeting the Panel confirmed agreement on the proposals amending the following:

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- Article 15 – Protection of Pay
- Article 32 – Annual Leave Year
- Article 38 – Public Holidays and Bank Holidays

Proposed amendments to the following articles were discussed:

- Article 13 – Minimum rates of pay for overtime
- Article 16 – Accommodation Offset Allowance (added as this was included as part of the NFU / FUW submission document)
- Article 23 – Determining the amount of agricultural sick pay
- Article 37 – Holiday Pay (following the recent Supreme Court decision)

Article 16 – this will be looked at when discussing the submissions from NFU/ FUW and Unite

Article 37 – Helen Snow stated the way the Order requires the holiday pay for a worker with variable hours to be calculated is in accordance with the decision of the UK Supreme Court. It is clarified that employers should not take into account weeks where there is no work and employers should look back further than 52 weeks to incorporate where work was done to bring it to a 52 week period where remuneration was received. This has been included in the amendment of Article 37 as clarification. It is not new law.

It was confirmed that, for workers with variable hours, this calculation would need to be undertaken for every period of leave.

There is already an example in the guidance regarding the calculation however it was agreed additional examples will be included to encompass a worker taking one day of leave

ACTION POINT 2 – Dan Ricketts and Helen Snow to include additional examples in the AWO 2023 Guidance regarding the calculation of holiday pay for workers with variable hours

The amendment was approved by the Panel subject to there being a definition of “earlier weeks” included in Article 37(4)

Article 13 and Article 23 – Ivan Monckton stated his belief was the proposals were put together to clarify the principle that had already been agreed – they were not trying to “win” something for employees but to put in plain words what Unite already believed to be the case.

Darren Williams stated the issue was regarding the sick pay and the changes to the recovery of Statutory Sick pay – the Order stated the employer is required to pay the employee in full for the first 19 weeks (subject to eligibility). He added that the Order / legislation deals with a baseline figure – they are not stopping an employer paying overtime / sick pay on actual pay. The Order already provides a generous additional payment to the employee than what is available in other industries.

The independent members would need to decide on the amendments to each article as there was no agreement between the parties.

The meeting was briefly adjourned for discussions.

The Panel reconvened and the independent members stated in their view there should be an amendment to Article 13 in the following form of words:

“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”

A vote was undertaken regarding this form of words:

FOR – 4 (UNITE plus independents)

AGAINST – 2 (NFU / FUW)

The independent members also stated in their view they agree with NFU/FUW

for Article 23 however the following wording was proposed:

“23(1) 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”.

The reasoning for this is that by saying “at least” employer can choose to pay more than the minimum if they wish to do so.

A vote was undertaken regarding this form of words:

FOR – 4 (NFU/FUW plus independents)

AGAINST – 2 (UNITE)

B) Submission of AWO 2023 Papers

Nick Fenwick gave an overview of the submission from NFU Cymru / FUW

Jo Galazka gave an overview of the submission from UNITE

Both answered questions from other members regarding their submissions.

Initial proposals:

Grade	Current Rate (2022(2) Order)	NFU / FUW	Unite (RLW figure as uprated on 22/ 09/2022)
Grade A1	£4.81	NMW	RLW
Grade A2	£6.83	NMW	
Grade A3	£9.18	NMW	
Grade A4	£9.50	NLW	
Grade B1	£4.81	NMW	RLW + 3%
Grade B2	£6.83	NMW	
Grade B3	£9.18	NMW	
Grade B4	£9.79	NLW + 3.1%	
Grade C	£10.08	NLW + 6.193%	RLW + 6%
Grade D	£11.06	NLW + 16.515%	RLW + 17%
Grade E	£12.13	NLW +	RLW + 28%

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27.864%

Apprentice Year 1	£4.81	NMW	No proposal
Apprentice Yr 2+ (16 – 17 years)	£4.81	NMW	No proposal
Apprentice Yr 2+ (18 – 20 years)	£6.83	NMW	No proposal
Apprentice Yr 2+ (21 – 22 years)	£9.18	NMW	No proposal
Apprentice Yr 2+ (23+ years)	£9.50	NLW	No proposal

A discussion was held regarding the Real Living Wage. Steve Hughson stated that if the Panel are looking for a “progression” towards the Real Living Wage then neither proposal fulfils this as one is RLW as a baseline and the other is NMW/NLW. This puts the independent members in a difficult position – there needs to be some “middle ground”.

There were no proposals from either side on the following allowances:

- Dog Allowance
- Night Work
- Birth and Adoption Grant

The Panel unanimously agreed these will rise by the same percentage increase as the National Living Wage rate.

The Chair stated the Legislation, Justice and Constitution Committee in the

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Senedd has previously commented on the Accommodation Offset Allowance remaining the same year on year. The rate for “Other Accommodation” has not increased since 2012 – prior to which it tracked the NMW rate. The Tied Accommodation rate of £1.50 has been that rate for a very long time and there is no information available as to how this rate was set.

The meeting was briefly adjourned for discussions.

The Panel unanimously agreed the Accommodation Offset Allowance (both rates) will rise by the same percentage increase as the National Living Wage rate.

The Chair asked if there was a sense of agreement regarding the principle of moving towards the Real Living Wage. There is a system of accreditation for employers that wish to pay the RLW.

Unite stated it is very important to have the ambition to reach the Real Living Wage over a period of time and there is a plan of how this will be achieved – it is the right thing to do across all sectors not just agriculture to give workers a base standard of living. NFU/FUW countered that it also has to be affordable and the order already has a vastly superior overtime rate and agricultural sick pay provision and the Order has to set a minimum base rate.

A discussion was held but no agreement could be reached.

The Chair suggested that both parties come back with revised proposals in the morning that can be discussed and voted upon.

The meeting was adjourned for the day.

Day two - Item 1: Housekeeping / Apologies / Conflicts Of Interest

The Chair welcomed everyone back for day two.

Item 2: Social Partnership and Public Procurement (Wales) Bill Presentation

Neil Surman from the Welsh Government Social Partnership Division gave a presentation to the Panel on the Bill which aims to provide a framework to enhance the well-being of the people of Wales by improving public services through social partnership working, promoting fair work and socially responsible public procurement. This was followed by a question and answer session.

Item 3: Continuation of Agricultural Wages Order 2023

Both sides gave an overview of revised proposals regarding the 2023 Order:

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Overview

Grade	Current Rate (2022(2) Order)	NFU / FUW	Unite
Grade A1	£4.81	NMW + 3p	NMW
Grade A2	£6.83	NMW + 3p	NMW
Grade A3	£9.18	NMW + 3p	NLW + 2%
Grade A4	£9.50	NLW + 3p	NLW + 2%
Grade B1	£4.81	NMW + 3p	NMW
Grade B2	£6.83	NMW + 3p	NMW
Grade B3	£9.18	NMW + 3p	NLW + 2%
Grade B4	£9.79	NLW + 3.1%	(NLW+2%) + 3%
Grade C	£10.08	NLW + 6.193%	(NLW+2%) + 6%
Grade D	£11.06	NLW + 16.515%	(NLW+2%) + 16%
Grade E	£12.13	NLW + 27.864%	(NLW+2%) + 28%
Apprentice Year 1	£4.81	NMW	NMW

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Apprentice Yr 2+ (16 – 17 years)	£4.81	NMW	NMW
Apprentice Yr 2+ (18 – 20 years)	£6.83	NMW	NMW
Apprentice Yr 2+ (21 – 22 years)	£9.18	NMW	NMW
Apprentice Yr 2+ (23+ years)	£9.50	NLW	NLW

The Panel agreed the Apprentice rates should remain at the levels of the National Minimum Wage / National Living Wage.

Steve Hughson asked for comparisons to be created including a percentage increase from the existing NMW / NLW to the predicted rates from April 2023 – the Low Pay Commission had stated in June 2022 that NLW would rise to between £10.14 - £10.50 with a median of £10.32.

A comparison of the two proposals were created. Further discussions were held and NFU/FUW submitted a further proposal:

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Proposal

Grade	Current Rate (2022(2) Order)	NFU / FUW	Unite
Grade A1	£4.81	NMW	NMW
Grade A2	£6.83	NMW	NMW
Grade A3	£9.18	NMW + 5p	NLW + 2%
Grade A4	£9.50	NLW + 5p	NLW + 2%
Grade B1	£4.81	NMW	NMW
Grade B2	£6.83	NMW	NMW
Grade B3	£9.18	NMW + 5p	NLW + 2%
Grade B4	£9.79	NLW + 3.1%	(NLW+2%) + 3%
Grade C	£10.08	NLW + 6.193%	(NLW+2%) + 6%
Grade D	£11.06	NLW + 16.515%	(NLW+2%) + 16%
Grade E	£12.13	NLW + 27.864%	(NLW+2%) + 28%
Apprentice Year 1	£4.81	NMW	NMW

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Apprentice Yr 2+ (16 – 17 years)	£4.81	NMW	NMW
Apprentice Yr 2+ (18 – 20 years)	£6.83	NMW	NMW
Apprentice Yr 2+ (21 – 22 years)	£9.18	NMW	NMW
Apprentice Yr 2+ (23+ years)	£9.50	NLW	NLW

After considerations by the independent members a vote was undertaken on the proposals:

NFU/FUW (as amended) – 4 (NFU/FUW plus independents)

UNITE – 2 (UNITE)

Item 4 – Policy Regarding Cross Border Holdings

The Agricultural Wages Order only applies to work undertaken in Wales. In the context of a cross border farm it is a clear legal position but a difficult practical position – guidance can be published to explain the applicability of the Order but in practice it needs to be an agreement between the employer and agricultural worker.

No amendments are required to the Order but Helen Snow suggested the guidance for the 2023 Order includes a section explaining the scope of the Order so it is very clear and there are no agricultural workers working in Wales who are disadvantaged as result of their employer being based in England.

The Panel agreed to add a section into the guidance regarding cross-border working to set out the legal position.

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The public consultation document will now be drawn up and translated and will hopefully be issued w/c 19 September. The Panel agreed this would be open for a 4 week period and the responses will be discussed the meeting on 25 October.

Item 5 – Skills development and training event

A strategic awareness event is taking place on 11 October at the Royal Welsh Showground – arranged in conjunction with Farming Connect for the SDT sub-committee.

There will be a keynote address by Lesley Griffiths MS followed by sessions on the following topics:

- Current skills development and training provision – the landscape in Wales
- How do we promote the value of skills in the sector
- Encouraging new entrants into agriculture
- Creating a Strategy and Action Plan for skills development and training within the agricultural sector

Details and invites will be sent out in due course.

Item 6 – Real Living Wage Report

This will be a factual report to the Minister on what has happened since the Fair Work Commission report in 2019.

Unite stated they will submit a separate independent report to the Minister regarding this issue.

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ACTION POINT 3 – Nerys Llewelyn Jones to circulate a draft copy of the Real Living Wage report to all Panel members for comment.

Item 7 – Remuneration of panel members

Sian Hughes gave an update and stated this issue has highlighted the need for a wider review of remuneration of Panel members to bring it in line with other public bodies. This would be brought in line for when the next appointment of independent Panel members take place. In the interim there will be a modest increase of £10 per day for the stakeholder representatives.

Next meetings

The meeting scheduled for 27 September is cancelled as this will be during the consultation period.

The next meeting will take place on Tuesday 25 October and will be a virtual meeting.

The Chair thanked everyone for their efforts over the past two days and closed the meeting.

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