



Llywodraeth Cymru
Welsh Government

PUBLICATION

Agricultural Advisory Panel meeting: 17 January 2023

Minutes of the meeting held at the Welsh Government
Pavilion, Royal Welsh Showground, Llanelwedd.

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Present

Chair – Dr Nerys Llewelyn Jones

Independents – Steve Hughson, Janatha Stout

NFU Cymru – Simon Davies

FUW – Darren Williams

Unite – Ivan Monckton, Jo Galazka

Legal Adviser – Helen Snow (Geldards)

Welsh Government - Sian Hughes, Ryan Davies, Dave Thomas

Secretariat - Dan Ricketts

Item 1 – housekeeping/apologies/conflict of interest

The Chair welcomed everyone to the meeting including Dave Thomas who is the new Head of Strategic Framework for Agriculture with Welsh Government.

Item 2 – chair’s update

The Chair had no updates other than items to be discussed at the meeting.

Item 3 - outstanding actions/approval of minutes from AAP 38

The minutes were approved by the panel.

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Some action points will be discussed at today's meetings – the following action points are to be carried forward to future meetings:

Sian Hughes to meet with housing policy officials with a view to developing guidance over the next 12 months with regards to the different types of housing and how the different legislation affects both employers and workers.

Dan Ricketts to test the online holiday calculator for accuracy and then distribute to the panel.

Item 4 - Update on the Agricultural Wages Order 2023

The order was submitted to the minister on 21 November. Welsh Government legal services have been looking at the order and there is one outstanding issue regarding Article 13 and the overtime provisions. The proposed amendments to Article 10 and Article 15 had previously been approved by the panel over email.

Helen Snow talked the panel through the paper she had written on this subject (Document 4) and the potential options for the panel with regards to the article and the order.

The view of Welsh Government is that Welsh ministers do not have the power to require agricultural employers to make payments at rates which exceed the minimum rates set out in the order.

It is possible for the panel to put forward further legal arguments with regards to this decision – however the timetable for the 2023 order does not allow this to happen before the 2024 order.

Effectively the panel have two options:

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Option 1: Retain the current wording - agree to maintain the existing wording with a view to making further legal argument for the wording it originally proposed for the 2024 order.

Option 2: Adopt the “at least” wording proposed by Welsh Government legal services – this would amend article 13 of the order as follows:

“Agricultural workers must be remunerated by their employer in respect of overtime worked at a rate which is equivalent to at least 1.5 times 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”.

This option can be adopted by the panel either:

1. instead of the wording originally proposed by the panel: or
2. with a view to making further legal argument for the wording it originally proposed for the 2024 order

Either option can also be adopted by the panel on the basis that the guidance accompanying the order will stipulate that best practice is to pay overtime at the agricultural worker’s actual hourly rate.

The panel expressed their disappointment with the situation – especially the Unite members. It was stated that, anecdotally, in many cases employers already pay overtime at 1.5 times the workers actual hourly rate but there will always be some that do not. The amendments the panel had agreed were to provide clarity on this.

The panel agreed the decision made by the panel during the negotiations for the 2023 order would not be reneged upon or used as a “bargaining chip” when discussing the 2024 order. The only reason it was not in the 2023 order is because the legal position was preventing it.

The Panel unanimously agreed to adopt OPTION 2 with a stipulation in the

accompanying guidance document that best practice is to pay overtime at the agricultural worker's actual hourly rate.

ACTION POINT 1 – Helen Snow to resubmit the 2023 order to Welsh Government with the amendments as agreed.

ACTION POINT 2 – Dan Ricketts to ensure the accompanying guidance document to the 2023 order includes the stipulation that best practice is to pay overtime at the agricultural worker's actual hourly rate.

It also raised a wider timetabling issue with the order. The chair stated there needed to be a review on the whole process including the underpinning Agricultural Advisory Panel for Wales (Establishment) Order 2016. It was suggested the Panel wrote to the minister to report on the issues being considered and their recommendations – both in this specific instance regarding the overtime provisions and also requesting a review on the wider processes.

ACTION POINT 3 – Helen Snow to investigate legal arguments as to whether Welsh Ministers do have the powers with regards to the setting of the overtime rate at 1.5 times the worker's actual hourly rate.

The scope of the review will be on the agenda for the next meeting in February.

ACTION POINT 4 – All panel members to look at concerns and recommendations with regards to a discussion on a review of the AAP practices and processes at the next meeting.

When the order is finalised and comes into force a written statement will be made by the minister. Information will also be sent to be published in GWLAD and potentially the Welsh Government Spring Update (dependant on publishing timescales).

ACTION POINT 5 – Sian Hughes to investigate which publications are applicable to the forestry and horticultural sectors.

It was agreed that information will also be sent to the members of the panel for use within their own organisations.

ACTION POINT 6 – Welsh Government to draft a communication to be presented to the panel at the next meeting in February.

Item 5 - Update on agricultural employment data

Sian Hughes presented the specifications papers regarding a PhD student placement. Welsh Government are looking at a placement to help with the ongoing data issues. It would be for 3 to 6 months and would be split into 3 phases:

1. Work with Welsh Government and the panel to develop a thorough understanding of the problem and data/evidence requirements and pull together what is already available.
2. Identify potential innovative solutions to address the current gaps in required statistical data and provide consideration of the likely feasibility, costs, benefits and risks of each option.
3. Develop the approach to pilot the preferred option (if viable), setting out the methodology and technical issues and how they will be addressed (subject to approval and time availability).

It was clarified the placement would be a self-contained work package for a student undertaking a wider PhD and could utilise skillsets from many different areas.

The panel agreed this was a positive step – the main focus of the placement should be on Phase 2 (and potentially 3).

The panel approved the document with no amendments

ACTION POINT 7 – Sian Hughes to keep panel members informed of progress regarding the proposed PhD placement.

Item 6 - AAP Report 2018 - 2022

A draft version of the report had been distributed to panel members prior to the meeting.

A query was raised whether the panel expenditure reported in the document included the Welsh Government support.

It was also queried if the panel had a set annual budget they needed to work within.

It was also suggested that an introductory section was added to explain what the remit of the panel is and who the Agricultural Wages Order applies to. This would help to increase awareness within the sector.

Other small amendments were also suggested and the panel also agreed to publish full minutes of meetings (as approved by the panel) on the AAP pages of the website with links in the report.

ACTION POINT 8 – Dan Ricketts to look at other examples of independent panel reports to establish whether Welsh Government costs should be included and if the panel has a set annual budget.

ACTION POINT 9 – Dan Ricketts to add an introductory section to the report to include the remit of the panel and the relevance of the Agricultural Wages Order.

ACTION POINT 10 – Dan Ricketts to distribute an amended version of the AAP

report to panel members via email for approval prior to translation and publishing.

Item 7 - any other business

Draft calendar of meetings

A draft calendar for 2023 had been distributed to panel members prior to the meeting. The chair suggested the negotiations meeting took place earlier than September to try and elongate the timetable for the 2024 order.

The proposal was for the negotiations meeting to take place on a face-to-face basis on 26 and 27 June. Other meetings would take place as a mixture of online and face-to-face.

ACTION POINT 11 – NFU, FUW and Unite members to check on availability of their policy officials and to confirm within seven days.

Proposed dates:

- Tuesday 28 February (face-to-face)
- Tuesday 25 April (online)
- Monday 26 and Tuesday 27 June (face-to-face) (*subject to approval*)
- Tuesday 12 September (face-to-face)
- Tuesday 14 November (online)

Fair Work Report – AAP response to minister

A response has been drafted by the chair using information from previous meetings and work done by the panel, however a feasibility study in to paying

the Real Living Wage within three years (as recommended by the Fair Work Commission in their report) had not taken place.

It was stated that if the panel do not feel they have the expertise to undertake a study they can appoint external experts with Welsh ministers' approval. It was also suggested this took place after the PhD placement has looked at the data issues (although this would take more time).

A discussion was held by the panel as to whether it would be possible to undertake a feasibility study at this stage and the methodology.

- What are the issues?
- What are the barriers?
- What are the aims?
- What will the minister need to consider in any decision?

An agenda item will be tabled for the meeting in April to discuss the scope of any feasibility study.

ACTION POINT 12 – Welsh Government to draft a discussion paper outlining options regarding a feasibility study.

An interim report would be sent to the minister explaining the data project to be undertaken by the PhD placement and at the end of the project the panel would consider commissioning a feasibility study on the payment of the Real Living Wage.

ACTION POINT 13 – Nerys Llewelyn Jones to draft an interim report for panel approval before submitting to the minister.

The chair thanked everyone for their attendance and contributions and closed the meeting.

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