

# **AGRICULTURAL SECTOR (WALES) ACT 2014**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Agricultural Sector (Wales) Act 2014 which was passed by the National Assembly for Wales on 17 July 2013 and received Royal Assent on 30 July 2014. They have been prepared by the Department for Sustainable Futures of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

### **COMMENTARY ON SECTIONS**

#### **Section 1 – Overview**

2. This section sets out what the Act is doing. It highlights 3 key aspects:
  - the establishment of the Agricultural Advisory Panel for Wales,
  - the making of agricultural wages orders which set the terms and conditions for agricultural workers, and
  - the enforcement of the terms and conditions in those orders.
3. The commentary below explains each of these provisions in greater detail.

#### **Section 2 – Agricultural Advisory Panel for Wales**

4. Under this section, the Welsh Ministers must establish a panel to be known as the Agricultural Advisory Panel for Wales (“the Panel”). To do so, Welsh Ministers must make an order which will have to be passed by the National Assembly for Wales.
5. The Panel’s functions as set out by the Welsh Ministers in an order will, at the least, include –
  - promoting careers in agriculture,
  - preparing agricultural wages orders in draft, consulting on such orders and submitting them to the Welsh Ministers for approval,
  - advising the Welsh Ministers on other issues which may affect the agricultural sector.
6. This range of functions will enable the Welsh Ministers to task the Panel with considering many issues around the agricultural sector such as the recruitment and retention of workers into the sector and the how the sector can be encouraged and supported.
7. In the order establishing the Panel, the Welsh Ministers may also specify such other functions as they consider necessary to support the sector.
8. The membership of the Panel must include a member to chair the Panel and at least three, but not more than ten, additional members.

9. The Welsh Ministers must seek to ensure that the membership of the Panel:
  - has the skills and expertise necessary to enable the Panel to perform its functions efficiently and effectively, and
  - adequately reflects the interests of all parts of the agricultural sector.
10. In any order made establishing the Panel, the Welsh Ministers may stipulate how the Panel is constituted, how it will carry out proceedings, how its members will be appointed and its general powers. The Welsh Ministers may also add, amend or remove functions of the Panel.
11. Before establishing the Panel, or making any changes to it once established, the Welsh Ministers must carry out appropriate consultation. This might include, for example, farming unions and other sector representatives, farmers and agricultural workers.

### **Section 3 - Agricultural wages orders**

12. An agricultural wages order will set out the terms and conditions of employment which must be offered to agricultural workers in Wales.
13. In particular, it can specify –
  - the wages that must be paid to agricultural workers (which can vary according to the worker's qualifications and experience),
  - the holiday entitlement that an agricultural worker must receive, and
  - other terms and conditions of employment that are relevant to the agricultural sector, such as for example, requiring that an allowance is paid to a shepherd who is required to keep working dogs as part of his or her job.
14. Any rates of pay specified in an agricultural wages order must not be less than national minimum wage set by the UK government for all workers.

### **Section 4 – Agricultural wages orders: powers of the Welsh Ministers**

15. This section enables the Welsh Ministers to make an agricultural wages order after receiving a draft order from the Panel. The Welsh Ministers also have the power to refer the order back to the Panel for further consideration and resubmission by the Panel, if this is felt necessary.
16. The Welsh Ministers may also make agricultural wages orders on their own initiative, until the Panel is established. This enables the Welsh Ministers to account for any changes made to the National Minimum Wage, where those changes occur before the Panel has been established. This power could be used, for example, to set higher minimum agricultural wages, where the National Minimum Wage would otherwise increase beyond the minimum agricultural wage.

17. Should the Welsh Ministers decide to make an order under their own initiative, prior to doing so, they must consult the persons or bodies that they think are likely to have an interest in the order. In practice this is likely to include farming unions and other sector representatives, farmers and agricultural workers themselves.

### **Section 5 - Enforcement of minimum rates**

18. This section creates the enforcement regime for the provisions contained in agricultural wages orders which relate to the minimum rates of pay which agricultural workers must receive. It does so primarily by applying (with some modifications) the regime set up by the National Minimum Wage Act 1998 ("the 1998 Act") for enforcing compliance with the national minimum wage.
19. There are several aspects to this enforcement regime.

#### *Records*

20. The application of sections 10 and 11 of the 1998 Act confer upon agricultural workers the right to inspect their employers' records to ensure they are being paid at least the minimum rate that applies to them by virtue of an agricultural wages order. The worker can only do so if the worker has reasonable grounds to suspect that he or she is not being paid the correct amount. The worker must follow the procedure set out in section 10 of the 1998 Act (as applied by this Act) to be able to access the records.
21. Where an employer does not allow the worker access to the records, the worker may complain to an employment tribunal. If the employment tribunal finds the complaint well-founded, it must make a declaration to that effect and award the worker a financial sum.

#### *Powers of officers*

22. The application of section 14 of the 1998 Act confers powers on the officers appointed by the Welsh Ministers (see section 8 of this Act below) to ensure compliance with the enforcement regime. In particular, the officers have a range of investigative powers to require the production of information and records.
23. It is an offence (by virtue of the application of section 31(5) of the 1998 Act), for a person to delay or obstruct an officer from carrying out his or her duties. It is also an offence for a person to refuse to answer an officer's questions or to supply information that the officer is entitled to require the person to provide.

#### *Entitlement to additional remuneration in the event of underpayment*

24. The application of section 17 of the 1998 Act means that, where an agricultural worker is paid at a rate below the minimum rate which that the worker is entitled to receive by virtue of the Act, then the worker becomes entitled to additional remuneration for the period which the worker was underpaid.

25. The additional remuneration to which the worker is entitled is calculated on a different basis from that in the 1998 Act by virtue of modifications in section 5(6) of this Act. The worker is entitled to the higher of either:
- the difference between what the worker was paid and what the worker should have been paid, or
  - the amount worked out in accordance with the formula set out in section 5(6)(b) of this Act which is substituted for section 17(4) of the 1998 Act.

#### *Notices of underpayment*

26. The application of sections 19, 19C, 19D, 19F, 19G and 19H of the 1998 Act provide the mechanism for enforcement officers to serve notices on employers who, in the opinion of the officer, may have underpaid a worker or workers. The notice requires the employer to pay the sum due to the worker (calculated in accordance with section 17 of the 1998 Act, as applied by this Act) within 28 days of being served with a notice.
27. An employer who has been served with a notice of underpayment can appeal to an employment tribunal.
28. If a notice is not complied with (completely or otherwise), an officer can make a complaint on behalf of the worker to an employment rights tribunal.
29. Unlike the 1998 Act, this Act does not provide for the imposition of financial penalties (over and above an additional remuneration due) on employers.

#### *Right not to suffer detriment*

30. The application of sections 23 and 24 of the 1998 Act confer a right on a worker not to suffer detriment by his employer for:
- the worker enforcing rights under this Act (or having such rights being enforced on the worker's behalf),
  - the worker's employer being prosecuted under this Act, or
  - the worker being or becoming (or potentially being or becoming) entitled to be paid a minimum rate of remuneration in accordance with this Act.
31. Where an employer does subject the worker to detriment as a result of enforcing the worker's rights, the worker can make a complaint to an employment tribunal.

#### *Offences*

32. The application of sections 31 to 33 of the 1998 Act provide for the offences in relation to:
- failure to pay to an agricultural worker the minimum rate to which that worker is entitled;
  - failure to keep and preserve the records that an employer is required to keep by virtue of regulations made under section 7 of this Act;
  - making, having made or allowing to be made false entries in those records;
  - producing information or records which the person producing them knows to contain information which is false in a material particular;

- delaying or obstructing officers in the carrying out of their duties or refusing to answer officers' questions or to provide officers with relevant information or records.

The penalty for these offences is an unlimited fine.

33. An enforcement officer may, if authorised by the Welsh Ministers, conduct the proceedings for an offence before a magistrate's court.

#### *Restrictions on contracting out*

34. The application of section 49 of the 1998 Act prevents agricultural workers and their employers from agreeing to a contract which would circumvent the minimum terms and conditions contained in an agricultural wages order.
35. This does not apply in relation to agreements entered into in relation to certain agreements prepared in order to resolve or avoid employment tribunal proceedings.

#### *Unfair dismissal*

36. Section 5(8) of this Act provides that an agricultural worker is to be regarded as having been unfairly dismissed if the reason (or the main reason) for the worker's dismissal relates to:
- the worker enforcing their rights under this Act,
  - the worker's employer being prosecuted under this Act, or
  - the worker being or becoming (or potentially being or becoming) entitled to be paid a minimum rate of remuneration in accordance with this Act.

### **Section 6 - Enforcement of holiday entitlement**

37. This section makes it an offence for an employer of an agricultural worker in Wales to fail to allow the worker to take the holidays specified in an agricultural wages order and provides that the maximum fine payable on conviction is level 3 on the standard scale (currently £4000).
38. Where an employer is prosecuted for a failure to allow a worker to take holidays, it is for the employer to prove that the worker was allowed to take the number of days holidays that the employer imposed, contrary to the number of days holidays specified in the relevant agricultural wages order.

### **Section 7 - Duty of employers to keep records**

39. The Welsh Ministers may make regulations requiring employers of agricultural workers to keep specific records which are relevant to this Act. For example, these records might include wages slips, time sheets, contract of employment and information relating to the holiday leave.

40. If the Welsh Ministers do make regulations under this section, by virtue section 5 of this Act, it will be an offence for an employer not to keep the specific records, or to deliberately make (or allow to be made) false entries in the records. The penalty for this, if convicted, is an unlimited fine.

### **Section 8 - Appointment of officers**

41. This section enables the Welsh Ministers to appoint enforcement officers to act in Wales.
42. In performing their duties officers must, if asked, produce appropriate identification proving that they are authorised to carry out such duties.
43. In addition, where officers are under the impression that any person they are talking to doesn't know that they are carrying out duties in relation to enforcing compliance with this legislation, the officers must explain that to the person.

### **Section 9 - Information obtained by officers**

44. Under this section, information that has been obtained by officers for the purposes of the Act may be supplied to the Welsh Ministers (typically to enable them to bring prosecutions under the Act) or to the person to whom the information applies (so that civil proceedings may be brought in respect of the underpayment).
45. However, the Welsh Ministers may not supply information received under this section to any other person or body unless it is required for criminal or civil proceedings.

### **Section 10 - Meaning of "the national minimum wage"**

46. This section provides the definition of the national minimum wage for the purposes of this Act.
47. In most cases this is the minimum single hourly rate as set by regulations made under section 1(3) of the 1998 Act.
48. However, in the circumstances set out in subsection (2) to (5) of this Act a different rate for the national minimum wage may be deemed to apply.

### **Section 11 - Amendment of the Working Time Regulations**

49. This provision makes consequential amendments to the Working Time Regulations 1998 to ensure that those regulations continue to apply to agricultural workers in Wales in the same manner as they currently do in relation to the annual leave year for agricultural workers.

### **Section 12 - Transitional provision**

50. This section provides for the provisions of the Agricultural Wages (England and Wales) Order 2012 (as they were when that order was made on 20 July 2012) to have effect in relation to agricultural workers in Wales from 1 October 2013. Those provisions will cease to have effect when the Welsh Ministers make a new agricultural wages order under section 4 of the Act.
51. For the purposes of enforcing the provisions of the 2012 Wages Order from 1 October 2013, it is deemed to be an order made under section 4 of the Act. The rights and liabilities accrued prior to 1 October 2013 are to be enforced under the Agricultural Wages Act 1948: see article 4 of the Enterprise and Regulatory Reform (Commencement No. 1, Transitional Provisions and Savings) Order 2013 (SI 2013/1455).
52. If, at any point, the national minimum wage exceeds any minimum rate of the 2012 Wages Order, the minimum rate in question is deemed to be the same as the national minimum wage.
53. For ease of reference, a copy of the Agricultural Wages (England and Wales) Order 2012 is annexed to these Notes.

### **Section 13 - Report on operation and effect of this Act**

54. This section provides that the Welsh Ministers must review the operation and effect of the Act during the first three years after the Act receives Royal Assent. As soon as is practically possible after the expiration of the three year period, and having consulted interested parties in order to assist them, the Welsh Ministers must produce a report containing information on the operation and effect of the Act, and lay it before the National Assembly for Wales.
55. The report will also contain details about the effect of the Act upon agricultural workers, employers of agricultural workers and the agricultural sector generally.
56. The Welsh Ministers must publish the report after it has been laid before the National Assembly for Wales.

### **Section 14 - Duration of this Act**

57. This section operates to bring to an end to the Act four years from the date it comes into force, unless the Welsh Ministers make an order stating that the Act is to continue in effect.
58. An order to retain the effect of the Act may only be made by the Welsh Ministers after the 3 year review period has expired but before four years has passed since the date the Act came into force.

### **Section 15 - Offences by bodies corporate**

59. Under this section, where a body corporate (such as a company) has committed an offence, a director, manager or secretary or similar officer of a body corporate (or a person purporting to hold such a position) may also be convicted and punished for the offence if they were involved with the commission of the offence, knew about it (and did nothing) or should reasonably have known about it.

### **Section 16 - Ancillary provision**

60. This section enables the Welsh Ministers to make orders for the purposes of, or in connection with giving full effect to the Act.
61. This might be used, for example, to make consequential amendments to other legislation when the Agricultural Advisory Panel for Wales is established.

### **Section 17 - Orders and regulations**

62. This section provides that the powers of the Welsh Ministers to make orders and regulations are to be exercised by statutory instrument. When doing so, the Welsh Ministers can make other provision in order to give full effect to those orders or regulations (such as dealing with transitional matters).
63. Orders under sections 2, 14 and section 16 (where it modifies the text of an Act or Measure of the National Assembly for Wales or an Act of Parliament) are subject to the affirmative procedure, as are regulations made under section 7.
64. Any other orders made under the Act are subject to the negative procedure.

### **Section 18 - Interpretation**

65. This section provides the meaning of key terms within the Act.
66. Of particular note here are the definitions of “agricultural worker” and “agriculture”.
67. An “agricultural worker” is a person employed in agriculture in Wales, whether or not the whole of the work undertaken by virtue of that employment is undertaken in Wales. Therefore, it matters not what percentage of work is undertaken in Wales for a worker to be covered by the provisions of the Act.
68. The definition of “agriculture” is broader than what might typically be seen as its ordinary meaning. As a result, while it encompasses cultivating soil for the growing crops and the rearing of animals to provide food, wool and other products, it also includes such activities as dairy farming, using land as osier land or as a market garden.

### **Section 19 - Commencement**

69. The provisions of the Act came into force on 30 July 2014, the day of Royal Assent.

**RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

70. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IIId=727>

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<b>Stage</b>	<b>Date</b>
Introduced	2 July 2013
Stage 1 - Debate	9 July 2013
Stage 2 Scrutiny Committee - consideration of amendments	16 July 2013
Stage 3 Plenary - consideration of amendments	17 July 2013
Stage 4 Approved by the Assembly	17 July 2013
Royal Assent	30 July 2014