

SL(6)600 – The Agricultural Wages (Wales) Order 2025

Background and Purpose

The Agricultural Wages (Wales) Order 2025 (the “**Order**”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The Order revokes and replaces the Agricultural Wages (Wales) Order 2024 with changes which include increases to the minimum hourly rates of pay.

Part 2 of the Order provides that agricultural workers are to be employed subject to terms and conditions set out in Parts 2-5 of the Order, and specifies the different grades and categories of agricultural worker.

Part 3 makes provision about:

- minimum rates of remuneration;
- accommodation offset allowance;
- allowance for a dog;
- on-call allowance;
- night work allowance; and
- birth and adoption grants.

Part 4 provides for an entitlement to agricultural sick pay in specified circumstances.

Part 5 makes provision about an agricultural workers entitlement to time off, including rest breaks, daily rest, and weekly rest period. Provision is also made about an agricultural worker’s annual leave year and their entitlement to annual leave, holiday pay and payment in lieu of annual leave. This Part also makes provision for an agricultural worker’s entitlement to paid bereavement leave.

Part 6 contains revocation and transitional provision.

Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd.



The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

Technical Scrutiny

The following 7 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In this Order, the terms “*public holiday*” and “*bank holiday*” are used articles 2 and 36. These terms have not been defined and given a meaning in this Order.

We recognise that these terms are not consistently defined in every Act or Statutory Instrument. However, we would be grateful for confirmation that the Welsh Government considers their meaning to be sufficiently certain from the context in which they are used in the Order.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In article 5(b), there is a difference in the drafting of the provision when compared with articles 6(a), 7(a) and 8(a).

In article 5(b), it refers to “*a level 2 apprenticeship **which is relevant** to their role in agriculture*”.

However, in articles 6(a), 7(a) and 8(a), the parallel provisions for the different Grades of agricultural worker refer to a required apprenticeship “***which must be** relevant to their role in agriculture*”.

Objectively, this suggests that there is a greater legal requirement for the relevance of the apprenticeships in articles 6(a), 7(a) and 8(a) compared with article 5(b).

The Welsh Government is asked to explain whether the identified distinctions are intentional.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In article 16(5), it notes “*The agricultural worker **will not be** required to repay [...]*”.

The Welsh Government’s drafting guidelines state that legislation should avoid using “*will*” for declaratory statements and that the present indicative should be used in such statements (see WLW 3.14(5)).

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.



The term “qualifying days’ is defined in article 2(1) for the entire order. This term is also defined in article 21(4) with a separate and distinct meaning for the purposes of article 21.

It appears that the separate definition of “*qualifying days*” in article 21 is superfluous as the term is not used anywhere in article 21.

We note that the term was used in article 22 of the 2024 Order (the equivalent provision to article 21 in the 2025 Order) for the purposes of calculating sick pay for those employed for less than 8 weeks. However, this provision was omitted for the 2025 Order.

If the separate definition is indeed superfluous and subsequently removed, we note that the additional wording in article 2(1) will also need to be removed (i.e. ‘*other than in article 21 where a different definition applies*’).

5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Article 24 of the Order deals with the scenario where an agricultural worker’s contract or apprenticeship ends during sickness absence. In such circumstances, sick pay continues in accordance with the provisions of article 24 until certain circumstances are triggered. Article 24(1) states:

*[...] if during a period of sickness absence, either an agricultural worker’s contract or their apprenticeship is terminated or the agricultural worker is given notice that either their contract or their apprenticeship is to be terminated, any entitlement which the agricultural worker has to agricultural sick pay continues after **that contract** ends as if the agricultural worker was still employed by their employer [...]* (emphasis added).

Based on the underlined text above, our understanding is that the provisions in article 24 are intended to apply to agricultural workers under a contract of employment, and/or those on apprenticeships.

However, in our view, the text “**that contract**” introduces uncertainty as it suggests that the sick pay provisions do not extend to those on apprenticeships. It appears that the drafting has used the term “contract” as shorthand to encompass both types of workers, but the previous use of ‘*an agricultural worker’s contract*’ has introduced uncertainty.

This ambiguity also extends into article 24(2):

*An agricultural; worker whose **contract** has been terminated is not entitled to agricultural sick pay [...].*

Given the previous ambiguity, it is unclear whether this is intended to encompass agricultural workers on apprenticeships.

6. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.



The 2025 Order makes new provision in relation to 'irregular hours workers' or 'part-year workers', as defined in regulation 15F of the Working Time Regulations 1998 ("**WTR 1998**").

In particular, article 32(5) of the Order makes provision to calculate the annual leave allowance of such workers. The annual leave allowance is to be "*calculated as a percentage of actual hours worked*" based on a formula:

$$\left(\frac{\text{Total annual leave entitlement in weeks provided in the Schedule}}{\text{Remaining working weeks in the annual leave year}} \right) \times 100$$

The explanatory memorandum states that "*these updates are based on the WTR 1998*".

We note that regulation 15B of the WTR 1998 makes provision in relation to annual leave for certain workers who work irregular hours. Generally, such workers accrue leave based on 12.07% of hours worked within a pay period.

The calculation above is not contained in regulation 15B of the WTR1998. As such, it is unclear where the formula derived, and in what ways the updates are "based on" on the WTR 1998.

We note that annual leave is generally proportional to hours worked, rather than time remaining in the annual leave year. Therefore, it would be useful to understand the rationale for using the '*remaining working weeks in the annual leave year*' as a denominator.

We are concerned that this may result in fluctuations in the leave entitlement as time passes. For example, a scenario where two employees working the same amount of hours, but at different times of the year, end up with different leave entitlements.

The Welsh Government is asked to explain where the formula in article 32(5) derived, and to address our concerns in relation to potential fluctuating leave entitlements.

7. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In article 35(4), in the English text, the term "*normal weekly pay*" is defined for that article because it is used in paragraph (1) of article 35. However, in the Welsh text, the term has been defined as "*tâl wythnosol arferol*" in article 35(4), but a different term "*cyflog wythnosol arferol*" has been used in paragraph (1) of article 35. Therefore, the term will not bear the same defined meaning in article 35(1) of the Welsh text.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

8. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.



This Order make numerous corrections to historical errors which were previously identified by the Committee in its report on the *The Agricultural Wages (Wales) Order 2024* (S.I. 2024/390 (W. 69)).

The specific amendments are listed in paragraph 2 of the Explanatory Memorandum under the heading '*Matters of special interest to the Legislation, Justice and Constitution Committee*'.

Welsh Government response

A Welsh Government response is required in relation to the technical reporting points.

Committee Consideration

The Committee considered the instrument at its meeting on 24 March 2025 and reports to the Senedd in line with the reporting points above.

