

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

# Agricultural Sector (Wales) Bill

[AS AMENDED AT STAGE 2]

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# Agricultural Sector (Wales) Bill

[AS AMENDED AT STAGE 2]

An Act of the National Assembly for Wales to make provision in relation to the agricultural sector in Wales; and for connected purposes.

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:-**

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## *Introduction*

### **1 Overview**

This Act makes provision for –

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- (a) the establishment of the Agricultural Advisory Panel for Wales,
- (b) the making of orders which set the terms and conditions for persons employed in agriculture in Wales (“agricultural workers”), and
- (c) the enforcement of such terms and conditions.

### *Agricultural Advisory Panel for Wales*

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

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(1) The Welsh Ministers must, by order, establish a panel to be known as the Agricultural Advisory Panel for Wales (“the Panel”) to carry out the functions listed in subsection (2).

(2) The functions are –

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- (a) promoting careers in agriculture;
- (b) advising the Welsh Ministers in relation to the exercise of their functions under section 3;
- (c) advising the Welsh Ministers on such other matters relating to the agricultural sector in Wales as the Welsh Ministers may require;
- (d) such other functions as the Welsh Ministers may specify in the order.

(3) The Panel is to consist of –

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- (a) a member to chair the Panel, and
- (b) at least 3, but not more than 10, other members.

(4) In exercising any functions in relation to the membership of the Panel, the Welsh Ministers must seek to ensure that the membership –

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- (a) includes persons with the skills and expertise necessary to enable the Panel to perform its functions efficiently and effectively, and
- (b) adequately reflects the interests of all parts of the agricultural sector.

(5) The Welsh Ministers may, by order, make provision –

- (a) about the constitution and proceedings of the Panel;
  - (b) about the appointment of members to the Panel;
  - (c) about the general powers of the Panel;
  - (d) adding, amending or removing functions of the Panel.
- 5 (6) Before making an order under this section the Welsh Ministers must consult such persons as they consider appropriate.

*Agricultural wages orders*

**3 Agricultural wages orders**

- 10 (1) The Welsh Ministers may, by order, make provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.
- (2) An order under subsection (1) may, in particular, include provision—
- 15 (a) specifying the minimum rates of remuneration to be paid to agricultural workers (including rates for periods when such workers are absent in consequence of sickness or injury);
  - (b) about any benefits or advantages which, for the purposes of a minimum rate of remuneration, may be reckoned as remuneration in lieu of payment in cash;
  - (c) requiring employers of agricultural workers to allow such workers to take such holidays and other leave as may be specified in the order;
  - 20 (d) setting such other terms and conditions of employment for agricultural workers as the Welsh Ministers consider appropriate.
- (3) An order under subsection (1) may specify different rates and make different provision for different descriptions of agricultural workers.
- (4) An order under subsection (1) may not include any provision about the pensions of agricultural workers.
- 25 (5) No minimum rate of remuneration may be specified in an order under this section which is less than the national minimum wage.
- (6) Before making an order under this section the Welsh Ministers must consult such persons or bodies as they consider are likely to have an interest in the order.
- 30 (7) The Welsh Ministers must, when exercising their functions under this section, have regard to any advice issued by the Panel.
- (8) For the purposes of this Act, an order made under this section is referred to as an “agricultural wages order”.

*Enforcement***4 Enforcement of minimum rates**

- (1) The enforcement provisions of the 1998 Act listed in subsection (2) are to have effect for the purposes of this Act as they have effect for the purposes of that Act (except so far as they relate to Northern Ireland or Scotland), but with the modifications specified in subsections (3) to (7) of this section.
- (2) The enforcement provisions are –
- (a) sections 10 and 11 (records);
  - (b) section 14 (powers of officers);
  - (c) section 17 (entitlement of worker to additional remuneration), except for subsection (3);
  - (d) section 19 (notices of underpayment: arrears);
  - (e) section 19C (notices of underpayment: appeals), except for subsections (1)(c) and (6) and, so far as relating to appeals under subsection (1)(c), subsection (8);
  - (f) section 19D (non-compliance with notice of underpayment: recovery of arrears);
  - (g) section 19F (withdrawal of notice of underpayment), except for subsections (2)(a) and (4);
  - (h) section 19G (replacement notice of underpayment);
  - (i) section 19H (effect of replacement notice of underpayment), except for subsections (4) and (5);
  - (j) sections 23 and 24 (right not to suffer detriment);
  - (k) section 28 (evidence: reversal of burden of proof in civil proceedings);
  - (l) sections 31 and 33 (offences);
  - (m) section 48 (superior employers);
  - (n) section 49 (restriction on contracting out).
- (3) In the application of any of those enforcement provisions –
- (a) any reference to the 1998 Act, other than a reference to a specific provision of it, includes a reference to this Act;
  - (b) any reference to a worker (within the meaning of the 1998 Act) is to be construed as a reference to an agricultural worker (within the meaning of this Act);
  - (c) any reference to a person (however described) who qualifies for the national minimum wage is to be construed as a reference to an agricultural worker;
  - (d) any reference to a record includes a reference to any record which the employer of an agricultural worker is required to keep and preserve in accordance with regulations made under section 6 of this Act;
  - (e) any reference to an officer acting for the purposes of the 1998 Act is to be construed as a reference to an officer acting for the purposes of this Act;

(f) subject to paragraph (c), any reference to the national minimum wage, other than a reference to the hourly amount of the national minimum wage, is to be construed as a reference to the minimum rate applicable by virtue of this Act;

(g) subject to paragraph (c), any reference to qualifying for the national minimum wage is to be construed as being entitled to the minimum rate applicable by virtue of this Act.

(4) In the application of sections 10(10), 14(1)(a) and 31 of the 1998 Act, the references to a record required to be kept in accordance with regulations made under section 9 of the 1998 Act includes references to a record required to be kept in accordance with regulations made under section 6 of this Act.

(5) In the application of section 14 of the 1998 Act, after subsection (2) insert –

“(2A) Where an officer wishes to exercise the power under paragraph (d) of subsection (1) in relation to a dwelling house, the officer must first give reasonable notice.”

(6) In the application of section 17 of the 1998 Act –

(a) for subsection (2) substitute –

“(2) The amount referred to in subsection (1)(a) is the difference between –

(a) the remuneration received by the worker as an agricultural worker for the pay reference period from the worker’s employer, and

(b) the amount which the worker would have received as an agricultural worker for that period had the worker been remunerated by the employer at the minimum rate applicable by virtue of the Agricultural Sector (Wales) Act 2013;”,

(b) for subsection (4) substitute –

“(4) the amount referred to in subsection (1)(b) is the amount determined by the formula –

$$(A/R1) \times R2$$

where –

A is the amount described in subsection (2),

R1 is the minimum rate applicable by virtue of the Agricultural Sector (Wales) Act 2013 in respect of the worker during the pay reference period, and

R2 is the minimum rate which would have been applicable by virtue of that Act in respect of the worker during the pay reference period had the minimum rate applicable by virtue of that Act in respect of the worker during that period been determined by reference to any order under section 3 of that Act in force at the time of determination.”

(7) In the application of section 33(1A) of the 1998 Act (authorisation for conducting proceedings) for “Secretary of State” substitute “Welsh Ministers”.

(8) In section 104A of the Employment Rights Act 1996 (unfair dismissal: national minimum wage), in subsection (1)(c) –

(a) any reference to a person qualifying for the national minimum wage includes a reference to a person being or becoming entitled to a minimum rate applicable by virtue of this Act, and

(b) any reference to a person qualifying for a particular rate of national minimum wage includes a reference to a person being or becoming entitled to a particular minimum rate applicable by virtue of this Act.

## **5 Enforcement of holiday entitlement**

(1) It is an offence for an employer of an agricultural worker to fail to allow the worker to take the holidays specified in an agricultural wages order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In any proceedings against a person under this section it is for the person to prove that the agricultural worker was allowed to take the holidays to which the worker was entitled.

### *Records*

## **6 Duty of employers to keep records**

(1) For the purposes of this Act, the Welsh Ministers may by regulations make provision requiring employers of agricultural workers –

(a) to keep, in such form and manner as may be specified, such records as may be specified, and

(b) to preserve those records for such period as may be specified.

(2) In this section, “specified” means specified in the regulations made under subsection (1).

### *Agricultural enforcement officers*

## **7 Appointment of officers**

(1) The Welsh Ministers may appoint officers to act in Wales for the purposes of this Act.

(2) An officer must, upon request, produce some duly authenticated document showing the officer’s authority to act.

(3) If it appears to an officer that, when acting for the purposes of this Act, any person with whom the officer is dealing is unaware that the officer is so acting, the officer must inform the person of that fact.

## 8 Information obtained by officers

- (1) Information that has been obtained by an officer acting for the purposes of this Act –
- (a) may be supplied to the Welsh Ministers, and
  - (b) where it relates to an identifiable agricultural worker, may be supplied to that worker.
- (2) The Welsh Ministers must not supply the information to any other person or body unless it is supplied for the purposes of any civil or criminal proceedings relating to this Act.
- (3) This section does not limit the circumstances in which information may be supplied or used apart from this section.

### Miscellaneous

## 9 Meaning of “the national minimum wage”

- (1) Subject to the subsections (2) to (5), “the national minimum wage” means the single hourly rate for the time being in force by virtue of regulations under section 1(3) of the 1998 Act.
- (2) Subsection (3) applies if, in the case of persons of any description, regulations under section 3(2) of the 1998 Act prevent them from being persons who (within the meaning of that Act) qualify for the national minimum wage.
- (3) This Act is to have effect in relation to persons of that description as if the national minimum wage were nil.
- (4) Subsection (5) applies if, in the case of persons of any description, regulations under section 3(2) of the 1998 Act prescribe a rate (“the reduced rate”) for the national minimum wage other than the single hourly rate for the time being prescribed under section 1(3) of that Act.
- (5) This Act is to have effect in relation to persons of that description as if the national minimum wage were the reduced rate.

## 10 Amendment of Working Time Regulations

- (1) The Working Time Regulations 1998 (SI 1998/1833) are amended as follows.
- (2) In regulation 2 (interpretation), in the definition of “worker employed in agriculture”, after “agriculture” insert “means, in relation to Wales, an agricultural worker within the meaning of section 17 of the Agricultural Sector (Wales) Act 2013 and otherwise”.
- (3) In paragraph 3 of Schedule 2 (workers employed in agriculture), after “1948” insert “, section 3 of the Agricultural Sector (Wales) Act 2013”.

## 11 Transitional provision

- (1) Notwithstanding the provisions listed in subsection (2), the provisions of the 2012 Wages Order are to have effect in relation to agricultural workers until such time as the Welsh Ministers make an agricultural wages order under section 3.



(2) The provisions are—

(a) section 72(4) and paragraph 2 of Schedule 20 to the Enterprise and Regulatory Reform Act 2013;

(b) article 4 of the Enterprise and Regulatory Reform Act 2013 (Commencement No. 1, Transitional Provisions and Savings) Order 2013 (SI 2013/1455).

(3) The provisions of the 2012 Wages Order are, for the purposes of any right or liability accrued under them on or after 1st October 2013, to be treated as if they are provisions of an agricultural wages order made under section 3 of this Act.

(4) In the event that the national minimum wage exceeds any minimum rate in the provisions of the 2012 Wages Order which is an hourly rate, the minimum rate in question is deemed to be the national minimum wage.

(5) In the event that the national minimum wage is such that a minimum rate (other than an minimum rate which is an hourly rate) in the provisions of the 2012 Wages Order yields a lesser amount of remuneration for each hour worked than the hourly amount of the national minimum wage, the minimum rate in question is deemed to be a rate such as to yield an amount of remuneration for each hour worked equal to the hourly amount of the national minimum wage.

(6) In this section, the “provisions of the 2012 Wages Order” means the provisions of the Agricultural Wages (England and Wales) Order 2012 (as made by the Agricultural Wages Board for England and Wales on 20 July 2012).

## 12 Report on operation and effect of this Act

(1) The Welsh Ministers must, as soon as practicable after the end of the review period, lay before the National Assembly for Wales a report on the operation and effect of this Act during that period.

(2) The report must, in particular, contain information about the effect that the operation of this Act has had upon—

(a) agricultural workers,

(b) employers of agricultural workers, and

(c) the agricultural sector generally.

(3) Before preparing the report, the Welsh Ministers must consult such persons as they consider appropriate.

(4) The Welsh Ministers must, as soon as practicable after the report has been laid before the National Assembly for Wales, publish the report in such manner as they consider appropriate.

(5) In this section “the review period” means the period of 3 years beginning with the day on which this Act comes into force.

**13 Duration of this Act**

- (1) This Act (other than subsection (3) and, for the purposes of that subsection, sections 14(1), 14(2) and 15) ceases to have effect at the end of the expiration period, unless an order is made under subsection (2).
- (2) The Welsh Ministers may, by order, after the end of the review period but before the end of the expiration period, provide that this Act is to continue in effect despite subsection (1).
- (3) The Welsh Ministers may, by order, make such provision (including provision modifying any enactment) as may be necessary or expedient in consequence of this Act ceasing to have effect.
- (4) In this section –
- “the expiration period” (“*y cyfnod dod i ben*”) means the period of 4 years beginning with the day on which this Act comes into force;
- “the review period” (“*y cyfnod adolygu*”) has the same meaning as in section 12.

*General***14 Offences by bodies corporate**

- (1) This section applies where an offence under this Act is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) any director, manager or secretary of the body corporate, or
- (b) any person who was purporting to act in any such capacity,
- that director, manager, secretary or person purporting to act as such (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) The reference to the director, manager or secretary of the body corporate includes a reference –
- (a) to any similar officer of the body;
- (b) where the body is a body corporate whose affairs are managed by its members, to any officer or member of the body.

**15 Ancillary provision**

- (1) The Welsh Ministers may by order make such incidental, consequential, supplemental, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, giving full effect to any provision made by or under this Act.
- (2) An order under this section may modify this or any other enactment.

## 16 Orders and regulations

- (1) Any power of the Welsh Ministers to make an order or regulations under this Act is exercisable by statutory instrument and includes power to –
- (a) make such incidental, consequential, supplemental, transitional, transitory or saving provision as the Welsh Ministers consider necessary or expedient for the purposes of, or in connection with, this Act, and
  - (b) make different provision for different purposes.
- (2) A statutory instrument which contains (whether alone or with other provisions) –
- (a) an order under section 2,
  - (b) regulations under section 6,
  - (c) an order under section 13, or
  - (d) an order under section 15 which includes provision which adds to, amends or omits the text of an Act of Parliament or a Measure or Act of the National Assembly for Wales;
- is not to be made until a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.
- (3) Any other statutory instrument containing an order under this Act is to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

## 17 Interpretation

In this Act, unless the context requires otherwise –

“1998 Act” (*“Deddf 1998”*) means the National Minimum Wage Act 1998 (c. 39);

“agricultural wages order” (*“gorchymyn cyflogau amaethyddol”*) has the meaning given by section 3(8) (but see also section 11(3));

“agricultural worker” (*“gweithiwr amaethyddol”*) means 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;

“agriculture” (*“amaethyddiaeth”*) includes –

- (a) dairy farming;
- (b) the production of any consumable produce for the purposes of a trade or business or any other undertaking (whether carried on for profit or not);
- (c) the use of land as grazing, meadow or pasture land;
- (d) the use of land for orchards, osier land or woodland;
- (e) the use of land for market gardens or nursery grounds;

“consumable produce” (*“cynnyrch defnyddiadwy”*) means produce grown for consumption or for other use after severance from the land on which it is grown;

“employment” (*cyflogaeth*) means employed under a contract of service or apprenticeship and “employed” (*a gyflogir*) and “employer” (*cyflogwr*) are to be construed accordingly;

“modify” (*addasu*), in relation to an enactment, includes amend or repeal;

5 “the national minimum wage” (*isafswm cyflog cenedlaethol*) has the meaning given by section 9.

**18 Commencement**

The provisions of this Act come into force on the day on which this Act receives Royal Assent.

10 **19 Short title**

The short title of this Act is the Agricultural Sector (Wales) Act 2013.