

Protecting agricultural workers in Wales

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The Welsh Government is currently [consulting](#) on the effectiveness of the *Agricultural Sector (Wales) Act 2014*. The Act aims to support a ‘resilient, sustainable and well-trained agricultural sector in Wales’, and in particular, regulates agricultural wages. The Act contains a ‘sunset clause’, meaning it will cease to have effect after 30 July 2018 if no new legislation is made to preserve it. The Welsh Government will use the outcome of the consultation to help it decide whether or not to maintain, amend or discontinue the Act.

The Act has stoked controversy during its short life. First, there was disagreement amongst stakeholders as to whether the legislation was needed in the first place. Second, the Bill for the Act passed through the Assembly as an Emergency Bill following the UK Government’s decision to revoke the *Agricultural Wages Order 2012* and abolish the Agricultural Wages Board. The decision to use the emergency procedure faced criticism by opposition Assembly Members. Third, the passage of the Bill raised constitutional questions as it touches upon both devolved and non-devolved areas. Following a legal battle, the Supreme Court ruled that the Bill was within the Assembly’s legislative competence bringing powers to set agricultural wages to Welsh Ministers. Consequently, the Act has impacted how the current devolution settlement is interpreted.

Agriculture in Wales

These are uncertain times for Welsh agriculture. With Brexit on the horizon, agricultural policy and legislation is expected to change as the UK will no longer participate in the Common Agricultural Policy (CAP) on leaving the EU. The Assembly’s Climate



Change, Environment and Rural Affairs Committee explored the implications of Brexit on the industry in its [inquiry into the future of agricultural and rural development policies](#) providing recommendations to both the Welsh and UK Governments. Recommendations included: guaranteeing farmers receive appropriate



funding in the absence of CAP support; ensuring sufficient access to labour in light of potential reductions in migrant labour; and that any UK frameworks be agreed by each of the constituent nations.

The agriculture sector in Wales employs 4.1% of the working population which is proportionally more than the 1.4% of the UK's working population. Agricultural sector work is distinctive having a physical nature, low wages, health and safety considerations and a significant amount of self-employed contractors.

The main output areas for Wales are red meat – lamb accounts for 29% of the UK's lamb production; beef, 11% of the UK's beef production and dairy 12% of UK production and 13% of the herd. The Welsh Government has included Food and Farming as a 'Priority Sector' and its vision for the sector post-Brexit is 'a prosperous, resilient agriculture industry promoting Wales' present and future well-being'.

Agricultural Sector (Wales) Act 2014

The Act establishes a regime setting minimum terms and conditions of employment for agricultural workers in Wales. This includes setting minimum wages, sickness and holiday entitlement and promotes careers in agriculture. In particular it:

- gives Welsh Ministers powers to make Orders setting agricultural terms and conditions such as minimum hourly rates of pay;
- establishes an Agricultural Advisory Panel for Wales with a remit to; promote careers in agriculture; prepare draft agricultural wages Orders for submission to Welsh Ministers; and advise Welsh Ministers on matters relating to the agricultural sector; and
- allows for the establishment of the Agricultural Advisory Panel's Skills Development and Training sub-committee to support the professionalism of the industry, promoting upskilling.
- Section 14 of the Act contains a 'sunset clause' where the Act ceases to have effect after 30 July 2018 if no statutory instrument is made to preserve it.



The consultation

The consultation runs between 12 June and 4 September, and seeks views on any aspect of the operation and effectiveness of the *Agricultural Sector (Wales) Act 2014*. Questions include:

- Do you think that the Act should be preserved?
- Do you consider that the Agricultural Advisory Panel has fulfilled all of its duties since its establishment?
- Do you consider that having agricultural wages orders which set minimum levels of hourly rates of pay and conditions is beneficial for the agricultural industry?

A wider review of the Act's provisions has been running from 30 July 2014 and will conclude at the end of this month. The Welsh Ministers are required to lay a report on the operation and effectiveness of the Act before the Assembly 'as soon as practicable' after the review period. The current

consultation will inform the report. If the decision is made that the provisions of the Act should remain in force, the Order preserving the Act must be in place by 30 July 2018.

The Emergency Bill

The Bill passed through the Assembly as an ['Emergency Bill' \(PDF 1 84KB\)](#). Emergency Bills follow a curtailed legislative process to enable the quick enactment of urgent legal provisions. The Bill was introduced in reaction to the UK Government revoking the *Agricultural Wages Order 2012* and the abolition of the Agricultural Wages Board (AWB) which applied to England and Wales. The Bill was introduced in an aim to preserve the statutory regulation of rates of pay and conditions provided under the 2012 Order and AWB.

There was [criticism](#) from opposition Assembly Members around the use of the emergency procedure due to the limited scrutiny this process provides. The Bill divided the farming unions. The Farmers' Union of Wales (FUW) advocated the need for the Bill stating that the AWB was a 'vital means of persuading high calibre people to remain in or enter the industry.' The National Farmers' Union (NFU) thought the Bill was unnecessary following developments, such as the National Minimum Wage, working time regulations and other legislative safeguards.



The Assembly's powers

[Constitutional issues](#) were raised during the passage of the Bill. The then UK Government Attorney General argued it was a matter of employment law rather than agriculture and therefore not within the scope of the Assembly's legislative powers. The Attorney General referred the Bill to the Supreme Court under the *Government of Wales Act 2006*.

The Supreme Court judges unanimously [concluded \(PDF 101KB\)](#) that the Bill fell within the Assembly's competence. The judgement had implications for interpretation of the Assembly's legislative competency. It set the precedent that a Bill does not have to be limited to devolved subjects in order for it to be within the competence of the Assembly.

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