



Llywodraeth Cymru
Welsh Government



Agricultural Minimum Wage 2024-2025

A Guide for Agricultural Workers and Employers on
Minimum Wage Rates and other Terms and Conditions

Issue 8

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1. Introduction

All employed agricultural, horticultural and forestry workers in Wales, including workers employed by gang masters and employment agencies, are entitled to at least the Agricultural Minimum Wage.

It is a criminal offence to not pay agricultural workers at least the Agricultural Minimum Wage.

This guide is intended to help employers of agricultural workers understand and comply with the Agricultural Minimum Wage requirements and other terms and conditions applicable to agricultural workers in Wales and to help workers understand their entitlements.

The information contained in this publication is provided as guidance only. It should not be seen as providing legal advice on the Agricultural Minimum Wage or on legal matters generally. If you are unclear about the terms or the effect of the Agricultural Minimum Wage, you should contact your legal adviser.

The Agricultural Advisory Panel

The Agricultural Advisory Panel for Wales is an independent body that advises Welsh Ministers on the Agricultural Minimum Wage arrangements and terms and conditions of employment for agricultural, horticultural and forestry workers in Wales. It also promotes careers in agriculture, horticulture and forestry, the development of an appropriately skilled workforce and provides additional advice to Ministers as required.

The minimum rates of pay and allowances and other minimum terms and conditions to which agricultural workers, including those who work within the horticulture and forestry sectors, are entitled to by law are set out in the Agricultural Wages (Wales) Order.

Annually, the Panel review the Agricultural Minimum Wage arrangements, and the other provisions of the Order, propose changes and consult on their proposals before submitting them in draft to Welsh Ministers for consideration.

In arriving at their decisions, the Panel draw on their expertise and consideration of the economic conditions in the industry at the time, as well as all legal requirements (such as the National Minimum Wage). This ensures agricultural workers receive fair, regularly reviewed, wages, allowances and terms of employment, further contributing to the Welsh Government's tackling poverty agenda by safeguarding household incomes, especially within rural communities.

Once passed by the Senedd, the Agricultural Wages Order has legal authority in Wales.

The Panel is made up of representatives from the Farmers Union of Wales, National Farmers Union Cymru, Unite the Union and three independent members.

The Agricultural Wages Order

The minimum rates of pay and allowances and other minimum terms and conditions to which agricultural workers, including those who work within the horticulture and forestry sectors, are entitled to by law from 1 April 2024 are set out in the Agricultural Wages (Wales) Order 2024 (“the Order”). The Order replaces the Agricultural Wages (Wales) Order 2023 and:

- Increases minimum pay rates for all grades (linked to increases in the National Minimum Wage and National Living Wage announced in the UK Government’s Autumn Statement on 22 November 2023).
- From April 2024 the National Living Wage will be extended to 21 and 22 year olds. The age bands of the Order have been amended accordingly and the 23 years+ age bands have been removed.
- Increases all allowances by 8.5%.
- Amends the overtime rates of pay to be payable by reference to the agricultural worker’s actual hourly rates of pay, rather than the minimum hourly rate of pay prescribed within the Order.

The statutory rates of pay and allowances specified by the Order will stay in force until a new Agricultural Wages Order is made (or until they are superseded by changes to the National Minimum/Living Wage).

This guidance provides information about conditions and levels of pay for the five grades of agricultural worker, detailed in the Order, and apprentices. The Order sets out detailed descriptions for each grade.

For convenience, the main entries in this guidance have been cross referenced to the corresponding articles in the Order e.g. Overtime Rates (Article 12).

Please consult the Agricultural Wages (Wales) Order 2024 for details of the current pay and allowance levels at gov.wales/agricultural-advisory-panel-wales/legislation-and-guidance.

UK employment law

The Agriculture Wages Order defines terms and conditions of employment for agricultural workers, including:

- different grades and categories of agricultural worker;
- minimum rates of pay;
- sick pay;
- entitlement to time off.

The Order has also been simplified in certain areas such as rest breaks and holiday/holiday pay so that certain Articles in the Order signpost employers and agricultural workers to other UK employment legislation (for example the Working Time Regulations 1998) which contain the relevant rights and obligations.

Links to the relevant UK Legislation stated within the Agricultural Wages Order are available in **Appendix C**.

For wider UK employment law issues not within the remit of the Agricultural Wages Order, such as family leave, the Advisory, Conciliation and Arbitration Service (ACAS) is an independent public body which provides free and impartial advice to employers, employees and their representatives.

Further information

Further information about Agricultural Minimum Wages can be found at:
gov.wales/agricultural-wages

For more information or for a copy of the Order and guidance, please contact:

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Llandrindod Wells
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2. Agricultural Minimum Wage 2024-2025 – What You Need to Know

The changes in the Agricultural Wages (Wales) Order are outlined below. For the new minimum rates of pay please see **Section 3**.

Overtime Payments (Article 12)

The wording of Article 12 has been amended to ensure that overtime is paid at a rate which is equivalent to 1.5 times the agricultural worker's actual hourly rate under their contract (as opposed to the applicable agricultural minimum wage hourly rate).

The Article now states "Agricultural workers must be remunerated by their employer in respect of overtime worked at a rate which is equivalent to 1.5 times their basic hourly rate of pay under their contract or apprenticeship".

Agricultural Wages Order Simplification

It is the aim of the Panel to ensure the Order is as simple as possible for employers and agricultural workers to understand and use. With that aim in mind, the Panel has considered ways in which the Order could be streamlined and future proofed by making references to existing UK employment legislation, rather than repeating the content of existing provisions.

The Articles in the Agricultural Wages (Wales) Order 2024 which have been amended accordingly are:

Interpretation (Article 2)

"child" has the meaning given in section 80EA of the Employment Rights Act 1996. A child will be the child of an agricultural worker if the agricultural worker satisfies the conditions specified in Regulation 4(2) of the Parental Bereavement Leave Pay Regulations 2020.

"normal weekly pay" means:

- a) payments, including commission payments, which are intrinsically linked to the performance of tasks which an agricultural worker is obliged to carry out under the terms of their contract;
- b) payments for professional or personal status relating to length of service, seniority or professional qualifications;
- c) other payments, such as overtime payments, which have been regularly paid to a worker in the 52 weeks preceding the calculation date.

"working time" has the meaning given in Regulation 2 of the Working Time Regulations 1998 and for the purposes of this Order includes:

- a) any time spent travelling by an agricultural worker for the purposes of their employment but does not include time spent commuting between their home and their place of work; and
- b) any period during which an agricultural worker is prevented from carrying out activities or duties in accordance with their contract or their apprenticeship due to bad weather.

and references to **"work"** are to be construed accordingly.

Rest Breaks (Article 28)

An agricultural worker is entitled to rest breaks in accordance with Regulation 12, Regulation 20(1), Regulation 21 and Regulation 24 of the Working Time Regulations 1998.

Daily Rest (Article 29)

An agricultural worker is entitled to a daily rest period in accordance with Regulation 10, Regulation 20, Regulation 21 and Regulation 24 of the Working Time Regulations 1998.

Weekly rest period (Article 30)

An agricultural worker is entitled to a weekly rest period in accordance with Regulation 11, Regulation 20, Regulation 21 and Regulation 24 of the Working Time Regulations 1998.

Amount of annual leave for agricultural workers with variable working days employed throughout the annual leave year (Article 33(4))

If at the end of the annual leave year, the agricultural worker has taken more holiday days than they were entitled to under this Order, based on the average number of qualifying days worked per week (calculated in accordance with paragraph (2)), the employer is entitled to deduct any pay for holiday days taken in excess of the agricultural worker's entitlement or, in the alternative, deduct the holiday days taken in excess of the agricultural worker's entitlement from their entitlement for the following annual leave year (provided any such deduction does not result in the agricultural worker receiving less than their statutory annual leave entitlement under the Working Time Regulations 1998).

Holiday Pay (Article 36)

- 1) An agricultural worker is entitled to be remunerated in respect of each day of annual leave taken by them based on the agricultural worker's normal weekly pay.
- 2) The amount of holiday pay to which an agricultural worker is entitled under paragraph (1) is to be determined in accordance with Regulation 16 of the Working Time Regulations 1998.

3. Agricultural Minimum Wage

Who is covered by the Agricultural Minimum Wage and the other provisions of the Order?

All employed agricultural, horticultural and forestry workers in Wales, including workers employed by gang masters and employment agencies.

The definitions of agriculture and agricultural worker under the Order are intended to capture agricultural workers in respect of any work done in Wales whether they are based in Wales and occasionally work in England or vice versa. The strict application of this provision therefore is that in respect of any work done in Wales, the agricultural worker should be paid according to the Order and should receive the benefits of the other provisions of the Order.

What is the relationship between the Agricultural Minimum Wage and the National Minimum Wage/National Living Wage?

The National Living Wage (NLW) (for those aged 21 and over) and National Minimum Wage (NMW) (for those of at least school leaving age) changes on 1 April each year.

From April 2024 the National Living Wage was extended to 21 and 22 year olds. The age bands of the Order have been amended accordingly and the 23 years+ age bands have been removed.

Where the NMW or the NLW rates become higher than the Agricultural Minimum Wage the NMW/NLW takes precedence (Article 11(1)).

Where higher than either NLW or NMW the Agricultural Minimum Wage applies.

Minimum Wage Rates 2024-2025 (Schedule 1)

The new minimum wage rates were introduced on 1 April 2024. The minimum rates of pay for the five grades of Agricultural worker are as follows:

Category of Worker	2024 Rates
A1 – Agricultural Development Worker (16-17 years)	£6.56
A2 – Agricultural Development Worker (18-20 years)	£8.82
A3 – Agricultural Development Worker (21 years+)	£11.73
B1 – Agricultural Worker (16-17 years)	£6.56
B2 – Agricultural Worker (18-20 years)	£8.82
B3 – Agricultural Worker (21 years+)	£11.79
C – Agricultural Advanced Worker	£12.27
D – Senior Agricultural Worker	£13.46
E – Agricultural Manager	£14.77

Accommodation Offset Allowance (Article 15)

Where a worker is provided with a house by the employer which the agricultural worker is **required** to live in for the proper or better performance of their duties, the employer may deduct no more than £1.79 per week from the agricultural worker’s minimum wage.

Where the employer provides other accommodation, the employer may not deduct more than £5.74 per day, from the agricultural worker’s minimum wage, as long as the worker has worked for a minimum of 15 hours for their employer in that week. No deductions should be made if the employee works under the 15 hour threshold.

Allowance	2024 Rates
Accommodation Offset Allowance (House)	£1.79 per week
Accommodation Offset Allowance (Other Accommodation)	£5.74 per day

Other Payments Which Do Not Form Part of an Agricultural Workers’ Remuneration

Dog Allowance (Article 16(a))

If it is necessary for a worker to keep a dog (or dogs) to enable them to do their job, then they should be paid a sum of not less than £10.16 per week for each dog.

On-Call Allowance (Article 16(b))

“On-call” means a formal arrangement between the agricultural worker and their employer where an agricultural worker who is not at work agrees with their employer to be contactable by an agreed method and able to reach the place where they may be required to work within an agreed time. The period of an on-call arrangement cannot exceed 24 hours. The on-call allowance is a sum which is equivalent to three times the hourly rate of the agricultural worker according to their grade.

The on-call allowance is payable in respect of every period the agricultural worker is on-call.

If called upon to work during any period when the agricultural worker is on-call, the agricultural worker will be entitled to be paid for any hours of work. If those hours worked are overtime (i.e. in addition to an 8-hour working day, to contractual hours of work, or on public holidays) then the agricultural worker will be entitled to be paid at the overtime rate of time-and-a-half for those hours.

Night Work Supplement (Article 16(c))

Night work rates apply between 7 pm one evening and 6 am the next morning, excluding the first two hours of work during this period. The night work supplement is £1.93 per hour.

This payment does not form part of an agricultural worker’s remuneration.

Birth and Adoption Grants (Article 16(d))

A payment may be granted to an agricultural worker under these circumstances, set at £79.86.

Allowance	2024 Rates
Dog Allowance – per dog per week	£10.16
Night Time Work Allowance – per hour of night work	£1.93
Birth Adoption Allowance – for each child	£79.86

4. Grading Structure (Articles 4-9)

A new Agricultural Minimum Wage grading structure was introduced in the Agriculture Wages (Wales) Order 2022 to ensure it remains relevant to the agricultural industry in Wales and fit for purpose. It aims to provide a skills and experience-based progression route through the grades for agricultural workers, as well as recognise and reward individuals who undertake an apprenticeship.

The grading structure differentiates between five grades of agricultural worker based on qualifications, work responsibility and experience in agriculture.

If the agricultural worker is on an Apprenticeship Programme they are classed as an Apprentice (see **Section 5**).

Agricultural Development Worker (Grade A)

An agricultural worker who:

- has less than 3 years practical experience relevant to their role in agriculture; and
- cannot provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 2 Apprenticeship*, in accordance with the Apprenticeship Framework, or met the requirements of a Level 2 or equivalent apprenticeship*, from outside Wales.

Agricultural Worker (Grade B)

An agricultural worker who:

- can provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 2 Apprenticeship* in accordance with the Apprenticeship Framework or have met the requirements of a Level 2 or equivalent apprenticeship*, from outside Wales; or
- has at least 3 years of practical experience in agriculture at Agricultural Development Worker Grade A.

Advanced Agricultural Worker (Grade C)

An agricultural worker who:

- can provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 3 Apprenticeship*, in accordance with the Apprenticeship Framework or have met the requirements of a Level 3 or equivalent apprenticeship* from outside Wales; or
- has at least 2 years of practical experience in agriculture at Agricultural Worker Grade B; or
- is employed as a **Team Leader**¹.

Senior Agricultural Worker (Grade D)

An agricultural worker who:

- can provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 4 Apprenticeship*, in accordance with the Apprenticeship Framework** or have met the requirements of a Level 3 or equivalent apprenticeship* from outside Wales; or
- has responsibilities including implementing management decisions independently or supervising staff.

Agricultural Manager (Grade E)

An agricultural worker who is required to have management responsibility including hiring and managing staff where relevant for the entire of the employer's holding or for part of the employer's holding which is run as a separate operation or business.

* All qualifications must be relevant to the agricultural worker's role in agriculture.

** The apprenticeship framework means any of the current Apprenticeship Frameworks for the agricultural sector in Wales published by Lantra, or previous versions of the Apprenticeship Frameworks for the agricultural sector in Wales published by Lantra on or before the date that the Order comes into force.

¹ For the purposes of this article, a "Team Leader" is responsible for leading a team of agricultural workers and for monitoring the team's compliance with instructions given on or behalf of their employer but is not responsible for disciplinary matters.

What are equivalent qualifications? (Schedule 4)

Equivalent Qualifications in England, Northern Ireland, Republic of Ireland and Scotland				
Wales	England	Northern Ireland	Republic of Ireland	Scotland
Level 2 Foundation Apprenticeship	Level 2 Intermediate Apprenticeship	Level 2 Traineeships NI	–	Level 5 Modern Apprenticeship
Level 3 Apprenticeship	Level 3 Advanced Apprenticeship	Level 3 Apprenticeship NI	Level 5 Apprenticeship	Level 6 Modern Apprenticeship, Foundation Apprenticeship
Level 4 Higher Apprenticeship	Level 4 Higher Apprenticeship	Level 4 Higher Level Apprenticeship	Level 6 Apprenticeship	Level 7 Modern Apprenticeship

Equivalent Qualifications under the European Qualifications Framework (EQF)	
Wales	European Qualifications Framework
Level 2 Foundation Apprenticeship	Level 3 EQF
Level 3 Apprenticeship	Level 4 EQF
Level 4 Higher Apprenticeship	Level 5 EQF

Determining an agricultural worker's grade

In order to determine an agricultural worker's grade under the new grading structure employers should consider the following factors:

- the agricultural worker's level of experience (i.e. the number of year's practical experience they have in the sector);
- any qualifications the agricultural worker has; and
- any additional responsibilities the agricultural worker undertakes (for example they supervise staff, hire staff, discipline staff or have management responsibilities).

It is considered best practice for the re-evaluation of grades to be undertaken on a regular basis in order to ensure workers are moving grades as appropriate.

Detailed guidance on the process that employers should follow in assigning the grade can be found at **Appendix A**.

Documentary evidence

Agricultural workers should maintain documentary evidence of qualifications and experience gained by them that is relevant to their employment and inform their employer if they have gained qualifications and experience that enables them to be employed at a different grade.

If agricultural workers do not keep records, they may not be able to demonstrate to their employer that they have the necessary qualifications and experience to be employed at a particular grade.

5. When is an Agricultural Worker Classed as an Apprentice (Article 10)?

An agricultural worker is classed as an Apprentice when they are employed under either a contract of apprenticeship, an agreement within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009, or are treated as if employed under a contract of apprenticeship.

Apprenticeships in Wales are a way to earn a wage and work alongside experienced staff to gain job-specific skills. An Apprentice must have a contract of employment, regular wage, paid holidays and the same benefits as other employees. Apprenticeships in agriculture can take between one and four years to complete and there are three levels available:

- Foundation Apprenticeship;
- Apprenticeship; and
- Higher Apprenticeship.

Minimum Rate of Pay for Apprentices 2024-2025 (Schedule 1)

Category of Worker	2024 Rates
Apprentice Year 1	£6.40
Apprentice Year 2 (16-17 years)	£6.40
Apprentice Year 2 (18-20 years)	£8.60
Apprentice Year 2 (21+ years)	£11.44

The apprenticeship age bands are aligned with the National Minimum Wage/National Living Wage.

From April 2024 the National Living Wage was extended to 21 and 22 year olds. The age bands of the Order have been amended accordingly and the 23 years+ age bands have been removed.

6. Overtime Rates (Article 12)

The wording of Article 12 has been amended within the 2024 Order to ensure that overtime is paid at a rate which is equivalent to 1.5 times the agricultural worker's actual hourly rate under their contract (as opposed to the applicable agricultural minimum wage hourly rate).

Agricultural workers are entitled to be paid at overtime rates for time worked:

- in addition to 8 hours in any day;
- beyond the hours specified in their contract; and
- on a public or bank holiday.

In addition, workers who were engaged under a contract of employment which started before 1 October 2006 must be paid for time worked which is not guaranteed overtime and which is:

- in addition to an 8 hour working day;
- in addition to the agreed hours of work in their contract of service;
- on a public holiday;
- on a Sunday; and
- on a Monday continuing work from the previous day. The worker would be entitled to receive overtime pay for any hours worked up to their normal starting time on the Monday (if they have one).

7. Agricultural Sick Pay (ASP) (Articles 18-27)

An agricultural worker is entitled to receive sick pay from their employer. Sickness absence means absence from work due to:

- any illness suffered by the agricultural worker;
- illness or incapacity caused by pregnancy or maternity;
- an injury that occurs at the place of work;
- an injury that occurs travelling to or from the place of work;
- time spent recovering from an operation caused by an illness; or
- time spent recovering from an operation in consequence of an injury suffered at their place of work or an injury suffered whilst travelling to or from their place of work.

It does not include:

- any injury suffered when not at their place of work; or
- any injury suffered when not travelling to or from their place of work.

The agricultural worker qualifies for Agricultural Sick Pay if they have been working for the same employer for at least 52 weeks. The entitlement varies according to the length of time the worker has been employed by the same employer (please see table below).

Length of continuous employment with same employer	Number of weeks Agricultural Sick Pay permitted
In the 2nd year of employment	13
In the 3rd year of employment	16
In the 4th year of employment	19
In the 5th year of employment	22
In the 6th and all subsequent years of employment	26

When a worker falls ill, they must immediately inform their employer.

If the illness lasts for eight days or more the worker must provide their employer with a medical certificate (Fit Note stating fitness to work).

Payment for absence from work due to sickness is generally made for all normal working days up to the maximum number of ASP days to which the worker is entitled.

ASP will not be payable for the first 3 days in situations where the duration of the sickness absence is less than 14 days.

An employer must pay sick pay weekly on the worker's normal pay day during and immediately after the end of the period of absence. Each payment must be for at least the amount the employer knows is due to the worker for any normal working days in respect of which the worker is entitled to be paid in that period.

Any two periods of sickness absence which are separated by a period of not more than 14 days must be treated as a single period of sickness.

If a worker has been employed by the same employer for less than 52 weeks they may be able to claim Statutory Sick Pay. For more information, please visit the UK Government website at www.gov.uk/statutory-sick-pay.

How to determine the amount of Agricultural Sick Pay (Article 22)

ASP is payable at a rate which is equivalent to at least the minimum hourly rate of pay at the applicable grade. Any payment of Statutory Sick Pay will be deducted from the calculation of the ASP.

The amount is determined by calculating the number of daily contractual hours that would have been worked during a period of sickness absence. The worker is entitled to their basic pay for these hours.

Worker with fixed number of weekly hours

In circumstances where the agricultural worker works a fixed number of hours each week, the entitlement is established by:

1. Dividing the total number of hours worked during a week by the number of days worked in that week.
2. The amount payable is worked out by multiplying the minimum hourly rates applicable to the worker's grade by the number of (working) days the worker has been off due to sickness.
3. If the sickness absence is less than 14 days in total, take away the first three days of the sickness absence before calculating the entitlement.

Example:

If a Grade D worker is contracted to work 35 hours each week spread over 5 days, the daily contractual hours worked is:

$$35 \div 5 = 7 \text{ hours (1 day)}$$

Therefore, if the worker was sick for **8 days** then the ASP is calculated for **5 days** (as ASP does not apply to the first 3 days of sickness absence).

$$\mathbf{1 \text{ day (7 hours)} = 7 \times \pounds 13.46 \text{ (the workers' basic hourly rate)} = \pounds 94.22}$$

$$\mathbf{\text{The worker is entitled to } 5 \times \text{daily rate} = \pounds 471.10 \text{ ASP.}}$$

Worker with varying number of weekly hours

In circumstances where a worker works a varying number of hours each week in accordance with their contract of service or apprenticeship, the following steps need to be followed to calculate the weekly and daily contractual hours:

1. Add up the weekly hours worked during an 8 week period.
2. Divide this total figure by 8. This will provide the average hours worked per week.
3. Divide the average hours worked with the average number of days worked each week by the agricultural worker during the period of 8 weeks immediately before the sickness absence.
4. If the sickness absence is less than 14 days in total, take away the first 3 days of the sickness absence before calculating the entitlement.

Example:

A worker (aged 21+) is employed at Grade B without fixed hours and is absent through illness for 15 days:

Week	1	2	3	4	5	6	7	8
Hours worked	20	25	30	32	30	39	25	28

Total number of hours worked in 8 week period = 229 hours

$229 \div 8 = 28.625$ (average weekly hours)

$28.625 \div 5$ (average number of days worked) = 5.725 (average hours worked per day)

5.725 (hours) \times £11.79 (the workers basic hourly rate) = £67.50

The worker is entitled to £67.50 in ASP per day

$\text{£}67.50 \times 15$ (number of days of sickness) = £1,012.50

The worker is entitled to £1,012.50 in ASP

8. Holiday Entitlement (Articles 31-40, Schedules 2-3)

All agricultural workers are entitled to annual leave and other types of leave.

The calculation of holiday pay includes any allowances paid to the agricultural worker on a consistent basis, including overtime.

The holiday year is the period of 12 months beginning on 1 October and ending on 30 September unless a different 12 month period is mutually agreed by agricultural workers and employers. Accrual of annual leave is at a rate of 1/52nd of the annual leave entitlement specified in the table below for each completed week of service.

The table below shows the holiday entitlement for workers who work for 52 weeks in the holiday year for the same employer. Workers who work for only part of the holiday year are entitled to a reduced amount of leave.

Days Worked Each Week	Holiday Entitlement
More than 6	38
More than 5 but not more than 6	35
More than 4 but not more than 5	31
More than 3 but not more than 4	25
More than 2 but not more than 3	20
More than 1 but not more than 2	13
1 or less	7.5

If a worker is not required to work on a public or bank holiday but this day would be his or her normal working day, then the day is treated as a day of annual leave.

However, if the worker does work on a public holiday or bank holiday they must be paid at the overtime rate for their grade or category, for the hours worked.

It is possible for a worker to receive payment in lieu of holiday as part of their annual leave entitlement, if agreed by their employer. The maximum number of days which may be bought out in any leave year is shown in the table below.

Days Worked Each Week	Maximum Days That May Be Bought Out
More than 6	10
More than 5 but not more than 6	7
More than 4 but not more than 5	3
More than 3 but not more than 4	2.5
More than 2 but not more than 3	2.5
More than 1 but not more than 2	1.5
1 or less	1.5

Holiday Pay (Article 36)

If a worker takes leave to which they are entitled they must be paid for each day (or part of a day) of leave taken. If a holiday of less than one day is taken, the holiday pay should correspond to the amount of the day taken. For example, if a worker takes half a day of holiday they are entitled to half a day's holiday pay.

The amount of holiday pay due to a worker depends on whether the worker's gross pay is the same from week to week or whether it varies.

Holiday pay for workers earning the same amount each week

If the worker's gross pay is the same from week to week then the amount of holiday pay is calculated as follows:

1. Calculate the amount of the worker's gross contractual weekly pay (including any overtime pay and allowances paid to the worker on a consistent basis).
2. Divide the amount (from step 1) by the days worked each week by the worker.
3. The resulting figure is the amount of holiday pay the worker is entitled to for one day of annual leave. Holiday pay for part of a day of annual leave is to be calculated as a proportion of the amount that would be payable for a full day of annual leave.

Example

A worker is employed at Grade D, contracted to work 30 hours per week (without guaranteed overtime) and work 5 days per week:

$£13.46$ (hourly pay of Grade D worker) $\times 30 = £403.80$

$£403.80 \div 5$ (days worked per week) $= £80.76$

The amount of holiday pay is £80.76 per day for the worker.

If the worker is taking a half-day as leave, the amount of holiday pay is $£40.38$ which is half of the full day holiday pay of $£80.76$.

Holiday Pay for Workers with Varied Weekly Earnings

If the worker's gross pay varies from week to week the amount of holiday pay is calculated by taking the worker's average pay over a period.

The period for calculating average pay is 52 weeks. **Any weeks in which no remuneration was payable to the worker should be excluded from the 52 week reference period and earlier weeks taken into account**, up to a maximum of 104 weeks.

If the worker has been employed for fewer than 52 weeks the calculation uses the actual number of weeks for which pay is due to the worker.

A day of holiday pay is calculated as follows:

1. Add up the total gross contractual pay (including any overtime and allowances paid to the worker on a consistent basis) due to the worker in the period of 52 weeks in which remuneration was payable (or actual number of weeks for which payment is due to the worker if worked fewer than 52 weeks) immediately preceding the commencement of the worker's holiday.
2. Divide the amount (from step 1) by 52 (or actual number of weeks for which payment is due to the worker if fewer than 52) to ascertain the average weekly pay received by the worker.
3. Divide the average weekly pay (from step 2) by the days worked each week.

Example

A worker is employed at Grade C with varying hours, working 5 days per week:

Gross contractual pay over previous 52 weeks = £20,710

Average pay for 52 week period = $£20,710 \div 52 = £398.27$

Daily rate = $£398.27 \div 5 = £79.65$

The amount of holiday pay is £79.65 per day for the worker.

If the worker is taking a half-day as leave, the amount of holiday pay is £39.83 which is half of the full day holiday pay of £79.65.

Workers with varying working days per week:

If the days worked each week by the worker vary it is important to calculate the **average** days worked per week.

This is calculated by adding the number of days worked each week over a 52 week period and then divide by 52. **Any weeks in which no remuneration was payable to the worker should be excluded from the 52 week reference period and earlier weeks taken into account**, up to a maximum of 104 weeks.

If the worker has been employed for fewer than 52 weeks the calculation uses the actual number of weeks for which pay is due to the worker.

Example:

A worker (aged 21+) is employed at Grade B with varying working days each week

Gross contractual pay over previous 52 weeks = £18,870.80

Average pay for 52 week period = $£18,870.80 \div 52 = £362.90$

Total number of days worked over previous 52 weeks = 234

Average days worked per week over the 52 week period = $234 \div 52 = 4.5$

Daily rate = $£362.90 \div 4.5 = £80.64$

The amount of holiday pay is £76.37 per day for the worker.

If the worker is taking a half-day as leave, the amount of holiday pay is £40.32 which is half of the full day holiday pay of £80.64.

Rolled up holiday pay

Agricultural workers with varied weekly earnings or varied working days per week may be “**irregular hours workers**” or “**part year workers**” for the purposes of calculating holiday pay under the Working Time Regulations 1998. For holiday years running from 1 April 2024 employers may be able to pay rolled-up holiday pay in respect of those workers. This means including an additional amount with every payslip to cover an agricultural worker’s holiday pay, as opposed to paying holiday pay when an agricultural worker takes annual leave. The calculation of holiday pay by an employer in this instance is based upon a percentage figure of the agricultural worker’s total pay.

To find the relevant percentage figure to include as an additional payment to cover an agricultural worker’s holiday pay it is necessary to do the following calculation:
(total holiday entitlement \div remaining working weeks in the year) \times 100.

Example:

If a part-year agricultural worker is entitled to 35 days which equates to 7 weeks of leave as per their contract, then:

$7 \div 46$ (weeks excluding the statutory minimum entitlement of 5.6 weeks) = 0.152

$0.152 \times 100 = 15.21$

Therefore, this worker’s holiday entitlement would be calculated as 15.21% of actual hours worked in a pay period.

Further guidance on calculating holiday and holiday pay for irregular hours and part year agricultural workers can be found here: www.gov.uk/government/publications/simplifying-holiday-entitlement-and-holiday-pay-calculations/holiday-pay-and-entitlement-reforms-from-1-january-2024#introduction.

If employers intend to start using rolled-up holiday pay, they should check the agricultural worker's contract in case this amounts to a variation of contract. Employers should tell their agricultural workers if they intend to start using rolled-up holiday pay and for this payment to be clearly marked as a separate item on each payslip. The holiday pay should be paid at the same time as the worker is paid for the work done in each pay period.

Employers that do not want to use rolled-up holiday pay for irregular hour and part-year workers can continue to use the existing 52-week reference period to calculate holiday pay if they choose to do so.

9. Bereavement Leave (Articles 41-43)

All workers are entitled to bereavement leave after the death of a member of their family. This would include a parent, grandparent, grandchild, child, brother, sister, spouse or civil partner or a person with whom the agricultural worker lives as husband and wife without being legally married, or someone with whom the agricultural worker lives as if they were in a civil partnership.

The amount of bereavement leave is determined by the relationship between the agricultural worker and the deceased individual.

An agricultural worker is entitled to 2 weeks bereavement leave on the death of a child. The agricultural worker will receive full pay for the first four days and an amount equivalent to statutory Parental Bereavement Pay for the remainder of the bereavement leave period.

A child means an individual under the age of 18 (including a baby that is stillborn after 24 weeks of pregnancy). A child will be the child of an agricultural worker if the agricultural worker:

- is the parent (including the adoptive parent) or foster parent of the child;
- has had the child placed with them for adoption (whether by a UK adoption agency or from overseas);
- is their intended parent under a surrogacy arrangement;
- is the natural parent of a child who has since been adopted by someone else, and there is a court order allowing the agricultural worker or the agricultural worker's partner to have contact with the child;
- looks after the child in their own home, other than as a paid carer, and has done so for at least four weeks; or
- is the partner of an individual in any of categories set out in (a) to (e) above.

An agricultural worker will be entitled to up to 4 days of bereavement leave in respect of the death of a parent, spouse, civil partner, or a person with whom the agricultural worker lives as husband and wife without being legally married, or someone with whom the agricultural worker lives as if they were in a civil partnership.

An agricultural worker will be entitled to up to 2 days of bereavement leave in respect of the death of a brother or sister, grandparent or grandchild.

Agricultural workers will be entitled to full pay in respect of these periods of bereavement leave.

10. Miscellaneous Conditions

Rest Breaks, Daily Rest and Weekly Rest Periods (Articles 28-30)

The Rest Break provisions within the Order follow the provisions of the Working Time Regulations 1998:

- All workers aged 18 and over are entitled to a rest break of at least 20 minutes where the worker's daily working time is more than six hours unless the worker and their employer agree otherwise to the extent permitted by or under the Working Time Regulations 1998.
- An agricultural worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which they work for their employer.
- The minimum rest period **may** be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.
- An agricultural worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day period during which they work for their employer, or two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which they work for their employer; or one uninterrupted rest period of not less than 48 hours in each 14-day period.
- Compensatory rest is allowed for an agricultural worker (but not an agricultural worker who is under 18) who is required to work during a rest period or a rest break due to a foreseeable surge of activity. In exceptional cases which it is not possible, for objective reasons, to grant such a period of rest, the agricultural worker's employer must afford them such protection as may be appropriate in order to safeguard the agricultural worker's health and safety. Possible examples of a foreseeable surge of activity would be at harvest or lambing time.

Agricultural workers under 18

- An agricultural worker who is aged under 18 and who has a daily working time of more than 4 and a half hours is entitled to a rest break of at least 30 minutes.
- An agricultural worker who is under 18 years of age is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which they work for their employer.
- The minimum rest period **may** be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.
- An agricultural worker who is under 18 is entitled to a rest period of no less than 48 hours in each seven-day period during which they are working for their employer. This **may** be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration; and may be reduced where this is justified by technical or organisational reasons, but not to less than 36 consecutive hours.
- No child who is permitted to work, and who is of compulsory school age, shall be employed for more than four hours in any day without a rest break of one hour.

Training Costs (Article 17)

If an agricultural worker attends training with the prior agreement of their employer, the employer must pay any fees for the course and any travelling and accommodation expenses incurred by attending the training.

A Grade A worker who has completed a total of 30 weeks continuous employment with the same employer is deemed to have received the approval of their employer to undertake training with a view to attaining the necessary qualifications required of a Grade B worker.

Young Workers of Compulsory School Age

Children below the age of 13 are not allowed to be employed in agriculture.

There are restrictions on the number of hours children are allowed to work. During term time, this is set at a maximum of 12 hours a week. During school holidays 13 to 14-year-olds are only allowed to work a maximum of 25 hours a week and 15 to 16-year-olds can only work a maximum of 35 hours a week.

For more information on child employment, please visit the UK Government website at www.gov.uk/child-employment.

Output Work (Piece Work) (Article 13)

The workers' hourly wage for output work (previously referred to as piece work) cannot be below the hourly pay applicable to their grade or the NMW/NLW.

For further information on Output Work please visit the UK Government website at www.gov.uk/guidance/calculating-the-minimum-wage/working-hours-for-which-the-minimum-wage-must-be-paid#output-work.

Travelling Time

Agricultural workers are considered to be working when they are travelling for the purpose of carrying out their duties, for example travelling from one field to another. They should be paid at the appropriate minimum rate for that time. Agricultural workers are not considered to be working when commuting to and from work.

11. Student Loan and Postgraduate Loan Repayments

If an employer has a graduate employee who received student loans whilst at university, unless the employee is not paying back the loan directly themselves, it has to be automatically taken out of their pay by payroll in the same way as for national insurance contributions.

If an employee, who has student loan deductions, is joining from a different role, their repayment plan will be outlined in their P45.

Otherwise, HMRC will send an SL1 and or PGL1 start notice to notify the employer to start deducting student loans.

Once deductions begin it's the responsibility of the payroll department or business owner to make clear to the employee the types of deductions they will face.

All deductions will be noted in the employee's payslip.

Further guidance for employers on student loan and postgraduate loan repayments can be found here: www.gov.uk/guidance/special-rules-for-student-loans.

12. Enquiries and Cases of Suspected Non-Compliance

It is a criminal offence to not pay agricultural workers at least the Agricultural Minimum Wage.

If you are an agricultural worker and you suspect your pay rate is below the correct Agricultural Minimum Wage rate, or other minimum terms and conditions of employment are not being adhered to, you should speak to your employer in the first instance. In doing so, you can ask for copies of your payment records.

If this does not solve the problem, you can make a complaint and seek redress by contacting the Welsh Government at:

Email: SLMEnquiries@gov.wales

Post: Agricultural Minimum Wage Team
Welsh Government
County Hall
Spa Road East
Llandrindod Wells
Powys LD1 5LG

Tel: 0300 060 4400

You may also want to discuss with your union representatives (see **Section 13** for useful contacts).

Your complaint/enquiry will be treated as confidential.

13. Useful contacts

National Farmers' Union (NFU Cymru)

Agriculture House
Royal Welsh Showground
Llanelwedd
Builth Wells LD2 3TU

Tel: 01982 554200

Email: nfu.cymru@nfu.org.uk

Farmers' Union of Wales (FUW)

Llys Amaeth
Plas Gogerddan
Aberystwyth
Ceredigion SY23 3BT

Tel: 01970 820820

Email: post@fuw.org.uk

Country Landowners Association (CLA Cymru)

Orbit Business Centre
Rhydycar Business Park
Merthyr Tydfil CF48 1DL

Tel: 01547 317085

Email: wales@cla.org.uk

Unite the Union (Wales)

Regional Office
1 Cathedral Road
Cardiff CF11 9SD

Tel: 02920 394521

Email: wales@unitetheunion.org

Lantra (Wales)

Royal Welsh Showground
Llanelwedd
Builth Wells
Powys LD2 3WY

Tel: 01982 552646

Email: wales@lantra.co.uk

Wales YFC

YFC Centre
Llanelwedd
Builth Wells
Powys LD2 3NU

Tel: 01982 553502

Email: information@yfc-wales.org.uk

For wider employment issues contact:

Citizens Advice

Helpline: **0800 702 2020**

Monday to Friday, 9am to 5pm

www.citizensadvice.org.uk/wales

Advisory, Conciliation and Arbitration Service (ACAS)

Helpline: **0300 123 1100**

Monday to Friday, 8am to 6pm

www.acas.org.uk

Appendix A – Determining an Agricultural Worker’s Grade

A new Agricultural Minimum Wage grading structure was introduced in the Agriculture Wages (Wales) Order 2022 to ensure it remains relevant to the agricultural industry in Wales and fit for purpose. It aims to provide a skills and experience-based progression route through the grades for agricultural workers, as well as recognise and reward individuals who undertake an apprenticeship.

The grading structure differentiates between five grades of agricultural worker based on qualifications, work responsibility and experience in agriculture.

Agricultural Development Worker (Grade A)

An agricultural worker who:

- has less than 3 years practical experience relevant to their role in agriculture; and
- cannot provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 2 Apprenticeship*, in accordance with the Apprenticeship Framework), or met the requirements of a Level 2 or equivalent apprenticeship*, from outside Wales.

Agricultural Worker (Grade B)

An agricultural worker who:

- can provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 2 Apprenticeship* in accordance with the Apprenticeship Framework or have met the requirements of a Level 2 or equivalent apprenticeship*, from outside Wales; or
- has at least 3 years of practical experience in agriculture at Agricultural Development Worker Grade A.

Advanced Agricultural Worker (Grade C)

An agricultural worker who:

- can provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 3 Apprenticeship*, in accordance with the Apprenticeship Framework or have met the requirements of a Level 3 or equivalent apprenticeship* from outside Wales; or
- has at least 2 years of practical experience in agriculture at Agricultural Worker Grade B; or is employed as a **Team Leader**².

Senior Agricultural Worker (Grade D)

An agricultural worker who:

- can provide documentary evidence to an employer they have been awarded the main qualification or qualifications required for a Level 4 Apprenticeship*, in accordance with the Apprenticeship Framework** or have met the requirements of a Level 3 or equivalent apprenticeship* from outside Wales; or
- has responsibilities including implementing management decisions independently or supervising staff.

Agricultural Manager (Grade E)

An agricultural worker who is required to have management responsibility including hiring and managing staff where relevant for the entire of the employer's holding or for part of the employer's holding which is run as a separate operation or business.

* All qualifications must be relevant to the agricultural worker's role in agriculture.

** The apprenticeship framework means any of the current Apprenticeship Frameworks for the agricultural sector in Wales published by Lantra, or previous versions of the Apprenticeship Frameworks for the agricultural sector in Wales published by Lantra on or before the date that the Order comes into force.

2 For the purposes of this article, a "Team Leader" is responsible for leading a team of agricultural workers and for monitoring the team's compliance with instructions given on or behalf of their employer but is not responsible for disciplinary matters.

What are equivalent qualifications? (Schedule 4)

Equivalent Qualifications in England, Northern Ireland, Republic of Ireland and Scotland				
Wales	England	Northern Ireland	Republic of Ireland	Scotland
Level 2 Foundation Apprenticeship	Level 2 Intermediate Apprenticeship	Level 2 Traineeships NI	–	Level 5 Modern Apprenticeship
Level 3 Apprenticeship	Level 3 Advanced Apprenticeship	Level 3 Apprenticeship NI	Level 5 Apprenticeship	Level 6 Modern Apprenticeship, Foundation Apprenticeship
Level 4 Higher Apprenticeship	Level 4 Higher Apprenticeship	Level 4 Higher Level Apprenticeship	Level 6 Apprenticeship	Level 7 Modern Apprenticeship

Equivalent Qualifications under the European Qualifications Framework (EQF)	
Wales	European Qualifications Framework
Level 2 Foundation Apprenticeship	Level 3 EQF
Level 3 Apprenticeship	Level 4 EQF
Level 4 Higher Apprenticeship	Level 5 EQF

This guidance aims to help employers undertake a grading review and provide guidance to agricultural workers on the process.

Determining an agricultural worker's grade

In order to determine an agricultural worker's grade employers should consider the following factors:

- the agricultural worker's level of experience (i.e. the number of year's practical experience they have in the sector);
- any qualifications the agricultural worker has; and
- any additional responsibilities the agricultural worker undertakes (for example they supervise staff, hire staff, discipline staff or have management responsibilities).

It is important to note that the agricultural worker's grade under the old grading structure (that is the grading structure in the Agricultural Wages Order 2020 and previous orders) should **not** be a factor in determining the agricultural worker's grade under the new grading structure. The new grading structure is intended to stand alone without reference to the old grading structure.

It is considered best practice for the re-evaluation of grades to be undertaken on a regular basis in order to ensure workers are moving grades as appropriate.

Documentary evidence

Agricultural workers should maintain documentary evidence of qualifications and experience gained by them that is relevant to their employment and inform their employer if they have gained qualifications and experience that enables them to be employed at a different grade.

If agricultural workers do not keep records, they may not be able to demonstrate to their employer that they have the necessary qualifications and experience to be employed at a particular grade.

The Process

1. Inform the agricultural worker

Employers should involve the agricultural worker from the outset in the process of assigning the new grade. They should explain why the process is necessary and what it will involve.

2. Evaluation

Employers should use the Grading Evaluation Form to set out the agricultural workers:

- a. level of experience;
- b. qualifications; and
- c. additional responsibilities.

3. Seek additional information

The employer may need to request additional information from the agricultural worker e.g. evidence of qualifications they hold or references in relation to previous employment and experience.

4. Determine and communicate the outcome

Based on the information in the Grading Evaluation Form and any additional information obtained, the employer should, by reference to the grading structure, determine the appropriate grade for the agricultural worker.

The grade and the reasons for allocating the grade should be discussed with the agricultural worker and both the employer and the agricultural worker should sign and date the Grading Evaluation Form as evidence of any change to the worker's grade.

The agricultural worker should also be informed of the effect of their assignment to the grade, for example what their hourly rate of pay will be and whether they will be eligible for pay protection (this is applicable if the rate of pay for the agricultural worker's new grade is lower than their rate of pay for their old grade).

The agricultural worker should also be given the right to appeal the assignment of the new grade if they are unhappy with the outcome.

5. Consider any appeal

The employer should consider any appeal by the agricultural worker in relation to the assignment of the new grade. Where possible this should be done by someone other than the decision maker in Step 2. In all instances the appeal should be considered impartially.

The outcome of the appeal should be communicated to the agricultural worker in writing.

Frequently asked questions

1. What if the evaluation of the new grade results in the assignment of a grade that has a lower hourly rate of pay than the agricultural worker's current hourly rate of pay?

If the new grade assigned to the agricultural worker has a lower hourly rate of pay than the agricultural worker's current rate of pay then the agricultural worker's pay will be protected in law at the current rate of pay³ until the rate applicable to their new grade reaches or exceeds their current rate of pay, or they move up to the next grade.

2. What if the agricultural worker does not agree with the new grade assignment?

It is advisable for the agricultural worker to be involved in the grading review from the outset to enable them to input into the process. The agricultural worker should be informed of the outcome of the grading review and the reasons why a particular grade has been deemed to be appropriate (by reference to the evidence considered).

If the agricultural worker does not agree with the new grade assignment, they should be given the option to appeal the outcome to their employer and provide any new information or evidence that they consider has not been taken into account in the grading review.

The employer should review their grading decision in light of any new information provided.

³ Article 14 The Agricultural Wages (Wales) Order 2024.

Enquiries and further assistance

If an employer or an agricultural worker has a query related to assigning grades under the new grading structure they should consult a relevant professional in the first instance (e.g. their accountant, trade union or legal advisor) – see **Section 13 – Useful Contacts**.

If this does not resolve the issue, they can contact Welsh Government:

Email: SLMEnquiries@gov.wales

Post: Agricultural Minimum Wage Team
Welsh Government
County Hall
Spa Road East
Llandrindod Wells
Powys LD1 5LG

Tel: 0300 060 4400

Your complaint/enquiry will be treated as confidential.

Grading Evaluation Form (with guidance)

Factor	Assessment & Record of Evidence Provided	Appropriate Grade & Reasons
Skills & Experience	Note the number of years' experience that the agricultural worker has, and any evidence provided to demonstrate e.g. references from previous employment	Consider the descriptions of the grades and determine the appropriate grade according to the evidence provided
Qualifications	Note any qualifications the agricultural worker has, and any evidence provided	Consider the descriptions of the grades and determine the appropriate grade according to the evidence provided
Responsibilities	Note any responsibilities currently held by the agricultural worker e.g. are they a team leader, do they implement management decisions or do they manage the holding or part of the holding run as a separate business	Consider the descriptions of the grades and determine the appropriate grade according to the evidence provided
Grading Outcome	Based on the information above determine the appropriate grade	

Additional evidence or information considered (if applicable)

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Employer

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Date

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Agriculture Worker

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Date

Grading Evaluation Form (Blank)

Factor	Assessment & Record of Evidence Provided	Appropriate Grade & Reasons
Skills & Experience		
Qualifications		
Responsibilities		
Grading Outcome		

Additional evidence or information considered (if applicable)

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Employer

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Date

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Agriculture Worker

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Date

Appendix B – Guidance on the Employment Status of Agricultural Workers in Wales

Introduction

This guidance is intended to assist farmers (as employers) and agricultural workers to understand their employment status and their associated rights. This guidance is an overview of the law in relation to the employment status of agricultural workers only, professional legal advice should be taken in relation to any specific matter.

An individual's employment status is important to determine what rights they have in relation to their employment, and the responsibilities of their employer.

In general terms there are three main types of employment status:

- employee;
- worker; and
- self-employed.

Employees have more employment rights than workers. What constitutes an employee and what constitutes a worker is defined by law. It is not always easy to determine the difference between an employee and a worker.

Employee

The Employment Rights Act 1996 defines an employee as:

“an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment”⁴.

A contract of employment means:

“a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing”⁵.

An employee therefore will work to the terms of their contract of employment (e.g. in relation to the hours and days of work). Under that contract they will have to carry out the work personally. An employee is entitled to have a written statement of their employment⁶ setting out the basic details of their employment e.g. salary, place of work, hours of work and notice.

Employees are entitled to a wide range of employment rights, including all those to which a worker is entitled.

4 Section 230(1).

5 Section 230(2).

6 Section 1 of the Employment Rights Act 1996.

Examples of employee rights include:

- written statement of employment;
- itemised pay slip;
- the National Minimum Wage;
- holiday pay, maternity and paternity pay etc.;
- the right to request flexible working hours;
- the right not to be discriminated against.

Worker

The Employment Rights Act 1996 defines a worker as:

“an individual who has entered into or works under (or, where the employment has ceased, worked under):

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual”⁷.

A worker will also therefore work to the terms of their contract of employment/contract for services although these terms may not be as prescribed as those in an employee’s contract of employment (for example hours and days of work may not be fixed).

Generally, a worker will have to carry out the work personally, however some workers may have a limited right to send someone else to carry out the work instead, such as a substitute or sub-contractor.

Workers could include:

- casual work;
- agency workers;
- freelance work;
- seasonal work;
- zero hours work.

⁷ Section 230(3).

Workers are entitled to some employment rights including:

- the National Minimum Wage;
- holiday pay;
- protection against unlawful discrimination;
- the right not to be treated less favourably if they work part-time.

Employment Status in the Agricultural Sector in Wales

The position in relation to employment status is slightly different in the agricultural sector in Wales from the general position as outlined above. In the agricultural sector in Wales for the majority of employment rights, there are two main types of employment status:

- agricultural worker (which covers employees and workers); or
- self-employed.

There are also others who work in the agricultural sector in Wales such as agency workers, volunteers and individuals on work experience who may not fall within the definitions of worker or self-employed individual. These types of workers are also considered in this guidance.

“Agriculture” includes dairy farming, 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), the use of land as grazing, meadow or pasture land, the use of land for orchards, osier land or woodland, the use of land for market gardens or nursery grounds.

Agricultural Workers

An agricultural worker in Wales is entitled to the rights set out under the Agricultural Wages Order which includes rights to:

- the agricultural minimum wage;
- holiday and holiday pay; and
- agricultural sick pay.

Whether agricultural workers are entitled to other rights in addition to those included in the Wages Order, e.g. maternity, paternity or shared parental leave, will depend upon whether they are an employee or a worker.

Self Employed

The other category of employment status is that of a self-employed individual.

A self-employed person will generally run their own business and take responsibility for the success of that business. Self-employed people will be contracted to provide a service for a farm or farmer as a client rather than as an employer.

They do not have the same employment rights as agricultural workers.

Deciding on Employment Status

It is not always easy to determine the employment status of an individual. There have been a number of recent cases where individuals who have been described as self-employed have been found by the courts to be workers. In the context of agricultural workers, as we have outlined above, this would mean the individual would be entitled to the rights as set out in the Agricultural Wages Order. It is important therefore to make the correct distinction between an agricultural worker and a self-employed individual.

The employment status that applies to an individual will depend upon the specific arrangements made between the farmer and the individual and the relationship in question. However, the following factors will likely indicate that an individual is genuinely self-employed:

- the farm/farmer is not obliged to offer work on a regular or frequent basis and the individual has no obligation to accept any work that is offered;
- the individual is able to determine when and how they work and is not under the direct supervision of the farmer/farm manager;
- the individual does not have to carry out the services personally and is able to appoint someone as their substitute;
- the individual is free to provide their services to whomever they choose without operating exclusively for one farm or farmer;
- the individual is engaged for a finite period to carry out a specific task or project;
- the individual is paid on completion of a specific task or project and will not normally be paid overtime;
- the individual provides their own equipment and materials in order to perform the services;
- the individual will be personally responsible for any losses arising from their work. They may be required to correct any unsatisfactory work in their own time and at their own expense;
- the individual is responsible for payment of their own income tax and National Insurance Contributions on their earnings and is responsible for registering for VAT if the level of their supplies exceeds the relevant registration limit.

Conversely, an absence of the factors above may indicate that an individual is not genuinely self-employed and is more likely to be an agricultural worker.

Example

An individual is engaged by a farmer to repair fencing. The farmer sets out the service wanted (i.e. repairing the fence) but the individual determines when and how that service is delivered. They use their own equipment and can either undertake the work personally or appoint someone to do the work on their behalf. The individual is free to manage their time and work elsewhere provided the work is completed in an agreed time-frame. The individual is paid for the specific task of repairing the fencing and the individual is then responsible for their own income tax and National Insurance Contributions and for registering for VAT if relevant.

The individual is likely to be acting as a self-employed independent sub-contractor and not an agricultural worker.

Example

An individual is offered work periodically e.g. during lambing season. For the lambing period, they are required to work exclusively for that farmer for the hours agreed/needed. The individual works under the supervision of the farmer and must undertake the work personally (i.e. they cannot send someone else). The individual may be paid overtime.

The individual is likely to be an agricultural worker for the period they are engaged by the farmer. As such, the provisions of the Agricultural Wages Order will apply to them for the period of their engagement.

Other Types of Individuals Working in Agriculture in Wales

There will be other types of individuals working in the agricultural sector who do not fall within the definitions of agricultural worker or self-employed individual.

Volunteers

Volunteers are unlikely to have a contract in place. They will **not** be considered to be an agricultural worker for the purposes of the Agricultural Wages Order if the following apply:

- the volunteer is only paid reasonable out-of-pocket expenses in relation to their volunteering role (ideally in relation to receipts as opposed to estimated);
- the volunteer is not undertaking work in return for regular gifts or rewards (one-off gifts of a small value or free entry to events are unlikely to change a volunteer's status and make them an agricultural worker)

Payments to volunteers that could be construed as wages, for example regular payments that do not relate to actual expenses incurred, requiring volunteers to work regularly at specific times for specific periods and providing volunteers with holiday, may all indicate that the volunteer is in fact an agricultural worker.

Work Experience

The nature of work experience can vary greatly. The term 'work experience' generally refers to a specified period of time that a person spends working on a farm, during which they have an opportunity to learn directly about working life and the working environment.

It is possible for an individual doing work experience to be considered an agricultural worker depending upon the nature of the relationship and the length of the work experience provided. It is unlikely that individuals who are merely shadowing i.e. watching and learning whilst undertaking some hands-on involvement for a short period would be considered agricultural workers. However, individuals working for longer periods in a more hands-on role with specific tasks and responsibilities are more likely to be agricultural workers and therefore subject to the Agricultural Wages Order.

The following categories of individuals however are exempt from the National Minimum Wage and therefore the agricultural minimum wage provisions set out in the Agricultural Wages Order:

- individuals of compulsory school age;
- students undertaking work experience placements not exceeding one year as part of a UK based higher education or further education course.

Agency Workers

An agency worker is supplied by a temporary work agency to a farm/farmer to carry out work for the farm/farmer. The work is normally for a temporary period.

The Agency Workers Regulations give agency workers the right to the same basic working and employment conditions they would receive if directly engaged by the farm/farmer to do the same job.

Contractual Documentation

Having a written contract in place, which sets out the nature of the relationship between the farm/farmer and the individual, can provide clarification as to whether the individual is intended by the parties to be an agricultural worker, self-employed contractor, or volunteer.

For example, a contract with an individual which stipulates hours and place of work, supervision, pay, term of employment and which prevents the individual from working elsewhere, will indicate a relationship of employer/agricultural worker. On the other hand, a contract for a specific period or task, which allows a substitute or sub-contractor to be appointed, where payment is at the end of the task or period, paid according to invoice and which makes the individual liable for any losses arising from failure to complete the work will indicate a relationship of client/self-employed sub-contractor.

It is important to note however that courts, when determining the employment status of individuals, will look beyond what the contractual documents state (i.e. to see what actually happens in practice) in order to establish the reality of the relationship. So merely stating that an individual is intended to be self-employed in a contract will not necessarily be determinative of their employment status - this will depend on what actually happens in practice.

Obligations Under Auto-Enrolment for Pension

All UK employers are obliged to auto-enrol eligible workers in a pension scheme and make mandatory minimum contributions. An eligible worker will be an individual who:

- works under a contract. This covers permanent and temporary agricultural workers, agency workers and apprentices;
- is aged at least 22 but has not reached state pension age; and
- who earns more than the earnings trigger of £10,000 a year.

Employment Status Checklist

Set out below are the key characteristics of:

- an employer/agricultural worker relationship (**left hand column**); and
- an arrangement between a farm/farmer and a self-employed sub-contractor (**right hand column**).

You can use the checklist to help determine whether an individual is an agricultural worker (and therefore subject to the provisions of the Agricultural Wages Order) or a self-employed individual who is not.

No single characteristic is determinative of the employment status of the individual; you will need to look at the relationship as a whole. For example, you may be able to tick boxes in both the agricultural worker column and the self-employed column. If, however, you tick the majority of the boxes in the agricultural worker column it is likely that the individual is an agricultural worker and therefore subject to the Agricultural Wages Order.

The checklist is intended as a guide only, professional legal advice should be taken in relation to any specific issue or if the employment status of an individual is unclear.

Agricultural Worker	Tick	Self-Employed	Tick
The farm/farmer has offered the individual work and the individual has accepted that offer (i.e. there is a contract or agreement whether express or implied, oral or in writing that the individual will work for the farm/farmer).		The individual is engaged for a finite period to carry out a specific task or project.	
The individual is required to provide their services personally (i.e. they cannot send someone in their place).		The individual is not required to carry out the services personally and can send someone else in their place without approval in advance by the farm/farmer.	
The individual can send someone in their place but this must be approved in advance by the farm/farmer and can only be done in certain situations e.g. the individual is unable to work due to illness.			
The farm/farmer controls what the individual does, how they do it and when they do it.		The individual has the ability to determine when and how they work and is not under the direct supervision of the farm/farmer.	
The individual cannot work for anyone else without the approval of the farm/farmer.		The individual is free to provide their services to whomever they choose without operating exclusively for one farm/farmer.	
The individual is paid a fixed amount on a regular payment date (i.e. weekly/monthly) and payment is not necessarily linked to the completion of a specific task.		The individual is paid on completion of a specific task. They do not receive and are not entitled to additional benefits (e.g. paid holiday and sick pay) and will not normally be paid overtime.	
		The individual will be responsible for any losses arising from their work. They may be required to correct any unsatisfactory work in their own time and at their own expense.	
The farm/farmer provides the individual with the facilities and/or equipment required by them to carry out their job.		The individual provides their own equipment and materials in order to perform the services.	
The individual is not responsible for the payment of income tax and National Insurance Contributions on their earnings, the farm/farmer assumes this responsibility.		The individual is responsible for payment of their own income tax and National Insurance Contributions on their earnings and is responsible for registering for VAT if the level of their supplies exceeds the relevant registration limit.	

Appendix C – Relevant UK Legislation

Employment Rights Act 1996

www.legislation.gov.uk/ukpga/1996/18/contents

The Parental Bereavement Leave Regulations 2020

www.legislation.gov.uk/ukdsi/2020/9780111192245/contents

The Working Time Regulations 1998

www.legislation.gov.uk/uksi/1998/1833/contents

Apprenticeships, Skills, Children and Learning Act 2009

www.legislation.gov.uk/ukpga/2009/22/contents