

A Guide for Workers and Employers

What you need to know about the Agricultural Wages Order 2012

Contents

1. Introduction.....	1
2. General Points.....	1
2.1 Scope and Limitation of this Guide.....	1
2.2 The Agricultural Wages Board	2
3. About the Agricultural Wages Order.....	2
3.1 Powers and Purpose	2
3.2 Who the Order applies to	2
3.3 Using the Order	2
3.4 Continuity of employment.....	3
3.5 Contracts of Employment	3
3.6 Other General Employment Law	4
4. Grades and Categories of Workers	4
4.1 General.....	4
4.2 Entry to a Grade dependent on Certificates or Qualifications (<i>Article 13</i>).....	4
4.3 Initial Grade – Grade 1 (<i>Article 4</i>).....	5
4.4 Standard Worker – Grade 2 (<i>Article 5</i>).....	5
4.5 Lead Worker – Grade 3 (<i>Article 6</i>)	5
4.6 Craft Grade – Grade 4 (<i>Article 7</i>)	6
4.7 Supervisory Grade – Grade 5 (<i>Article 8</i>).....	6
4.8 Farm Management Grade – Grade 6 (<i>Article 9</i>).....	7
4.9 Flexible Workers (<i>Articles 10 and 11</i>)	7
4.10 Trainees (<i>Article 15</i>)	7
4.11 Apprentices (<i>Article 16</i>)	8
5. Agricultural Minimum Wage Rates	8
5.1 General.....	8
5.2 Minimum Rates of Pay for Grades 1-6 (<i>Articles 25 and 26</i>).....	8
5.3 Minimum Rates of Pay for Apprentices (<i>Article 40</i>).....	9
5.4 Overtime Rates (<i>Articles 22 and 23</i>)	9
5.5 On-call Allowance (<i>Article 33</i>)	10
5.6 Travelling Time (<i>Article 18</i>)	10
5.7 Night Work Supplement (<i>Article 34</i>).....	10
5.8 Dog Allowance (<i>Article 32</i>).....	10
5.9 National Minimum Wage	10
6. Payments in Kind.....	11
7. Trainees.....	11
8. Rest breaks	11
9. Holidays and Other Leave	12
10. Agricultural Sick Pay	14
11. Working Time Regulations.....	15
12. Frequently Asked Questions.....	15
13. Useful Contacts	18

1. Introduction

This Guide is intended to help employers of workers employed in agriculture in England and Wales to understand and comply with the requirements of the Agricultural Wages (England and Wales) Order 2012 (“the Order”) and to help those workers understand their entitlements.

The rates of pay quoted in this Guide relate to the minimum rates effective from 1 October 2012.

If you require a copy of this Guide or the Agricultural Wages Order 2012 please contact the Pay and Work Rights Helpline on Freephone 0800 917 2368.

If you have any suggestions for ways in which this Guide might be improved, please write to the Secretary of the Agricultural Wages Board (address at the end of the Guide).

2. General Points

2.1 Scope and Limitation of this Guide

- The new rates of pay and other changes, which take effect from 1 October 2012, are contained in the Order, a copy of which was issued with this Guide. The Order sets out the legal requirements for the calculation of minimum pay, holidays, etc., and has to be written in precise legal terms to make it enforceable in law.
- This Guide aims to explain the requirements of the Order in simpler terms and to answer some of the questions which are most likely to arise and should therefore be read in conjunction with it. The Guide does not aim to cover every situation and is not a legal document nor should it be read as such. It does not remove the responsibility on employers to comply with the Order or the fact that interpretation of the law is ultimately a matter for the courts. If you would like advice on your particular situation please contact the Pay and Work Rights Helpline on Freephone 0800 917 2368, a solicitor or some other suitably qualified person.
- The Order makes provision for all workers employed in agriculture in England and Wales.
- For convenience the main entries in this Guide have been cross-referenced to the corresponding Articles of the Order. These cross-references are shown in italics, e.g.

Standard Worker - Grade 2 (*Article 5*)

- The Order contains important definitions of commonly used terms, for example, basic hours, and explains certain other features of the Order. The legal definitions are contained in *Part 1* of the Order.
- The Order sets out minimum rates of pay and other minimum terms and conditions to which agricultural workers are entitled by law. Employers may, at their discretion, pay more than the minimum rates or offer more favourable terms and conditions of service.

- If you have any questions about how the provisions of the Order should be applied in practice you should contact the Pay and Work Rights Helpline on Freephone 0800 917 2368.

2.2 The Agricultural Wages Board

- The Agricultural Wages Board for England and Wales is responsible for setting the minimum rates of pay and other terms and conditions of employment for agricultural workers. The Board consists of:
 - eight representatives of agricultural workers nominated by UNITE;
 - eight representatives of agricultural employers nominated by the National Farmers' Union (NFU); and
 - five independent members (including the Chairman) appointed by the Secretary of State for Environment, Food, and Rural Affairs and the Welsh Government.

3. About the Agricultural Wages Order

3.1 Powers and Purpose

- The Agricultural Wages Board for England and Wales is given the power to make the Order under the Agricultural Wages Act 1948, as amended. The Order comes into force on 1 October 2012 and should be referred to as the Agricultural Wages (England and Wales) Order 2012. It sets minimum wage rates and other minimum terms and conditions of employment which apply to workers in agriculture in England and Wales from that date.
- The Order has the force of law and will be enforced in England by the Department for Environment, Food, and Rural Affairs (Defra), and in Wales by the Welsh Government Department for Environment and Countryside. These Departments will investigate complaints made by workers who consider that they are not being paid in accordance with the Order. Individual workers may take action through a Civil Court or Employment Tribunal to recover any arrears of pay owed to them by an employer.

3.2 Who the Order applies to

- The Order applies to any worker employed in agriculture anywhere in England and Wales.
- In the event of a dispute over the application of the Order it is for the Courts or Employment Tribunals to decide whether a worker is employed in agriculture. Any worker who thinks they have not been paid correctly should contact the Pay and Work Rights Helpline on Freephone 0800 917 2368.

3.3 Using the Order

- The Order contains rates of pay and other minimum terms and conditions of employment. To use it you need to know what grade or category the worker is, depending on the

worker's duties and/or qualifications. These are explained in *Part 2* of the Order. If the worker is a Grade 1 (Initial Grade) Worker or an Apprentice you need to know the worker's age.

- Once you have this information you should refer to the following parts of the Order for information on:
 - minimum rates of pay (*Parts 3 and 4*)
 - benefits in kind (*Part 5*)
 - allowances, grants, and supplements (*Part 6*)
 - trainees, apprentices, and training costs (*Parts 7 and 8*)
 - rest breaks (*Part 9*)
 - annual holiday, public holiday, bereavement leave, and unpaid leave (*Part 10*)
 - Agricultural Sick Pay (*Part 11*)

3.4 Continuity of employment

- Certain rights under the Order depend on how long a worker has been continuously employed. In cases of dispute about continuity of employment, Employment Tribunals will consider the facts of each case including whether:
 - there was any week during the whole or part of which the employee's relations with their employer were governed by a contract of employment;
 - there was any week during the whole or part of which there was no contract of employment and the employee was:
 - incapable of work because of sickness or injury
 - absent from work due to a temporary cessation of work
 - absent from work in circumstances whether by arrangement or custom the employee is regarded as continuing in the employment of the employer.
- Under section 210(5) of the Employment Rights Act 1996, a person's employment is presumed to be continuous unless it can be shown otherwise. Advice on continuity of employment issues can be obtained from a Citizens' Advice Bureau, a trade union, a solicitor, or other professional adviser.

3.5 Contracts of Employment

- Although a contract of employment does not have to be written, it is in the interest of both parties that it should be. Under the provisions of Section 1 of the Employment Rights Act 1996 all employees who have been employed for a month or more under a contract of service or apprenticeship must be given written particulars of employment within two months of starting work.
- Where a contract of employment relates to a specific category of worker or a definition of a type of worker that is not consistent with the categories and definitions in the Order the

contract of employment will need to be modified. If a contract of employment gives a worker less favourable terms than those set out in the Order, the provisions of the Order override the contract of employment. It should be noted that the contract of employment is not necessarily the same as statutory particulars of terms and conditions under the Employment Rights Act 1996.

3.6 Other General Employment Law

- In recent years the amount of general employment law has increased considerably. The Order is not exhaustive and employers and workers will need to consider the provisions of the general law, in addition to the provisions of the Order, when considering their rights and obligations.

4. Grades and Categories of Workers

4.1 General

- The Order specifies six grades and four categories of agricultural worker. Deciding which type a particular worker is depends on their contract of employment, the number of hours they work, when they work these hours, their responsibilities, their qualifications and various other factors explained below. All workers who have been employed for a month or more under a written or oral contract are, under the provisions of general employment law, required to receive statutory written particulars of employment. These may further help to clarify the type of agricultural worker a person is.
- The Grades and other categories of worker used in the Order are as follows:
 - Grade 1 – Initial Grade
 - Grade 2 – Standard Grade
 - Grade 3 – Lead Worker
 - Grade 4 – Craft Grade
 - Grade 5 – Supervisory Grade
 - Grade 6 – Farm Management Grade
 - Full Time Flexible Worker
 - Part Time Flexible Worker
 - Apprentice
 - Trainee

4.2 Entry to a Grade dependent on Certificates or Qualifications (*Article 13*)

- Where entry into a particular grade depends on a worker having a specified qualification, certificate or document, it is the worker's responsibility to tell their employer that they have the relevant qualification, certificate or document. If the employer asks, in writing, for confirmation that the worker has the required documentation entitling them to entry to the grade concerned, the worker must provide their employer with a valid certificate or other document which shows that the required qualification has been obtained.

- Entry to the grade is effective from the date of disclosure and, under the Order, does not apply retrospectively.
- If the worker is unable to produce evidence of qualifications obtained it might be possible to obtain verification from the awarding body concerned, e.g. the National Proficiency Tests Council. However, the provisions of the Data Protection Act mean that an awarding body might not be able to divulge this information to a third party, such as an employer, without the consent of the worker concerned.
- In order to qualify for entry to Grades 2, 3 or 4 a worker must have obtained the relevant qualifications entitling them to entry to the particular grade. The qualifications so obtained must be those specified for the grade concerned as set out in *Articles 5-7* and the relevant Schedule of the Order.

4.3 Initial Grade – Grade 1 (*Article 4*)

- An Initial Grade worker is a worker who does not fall within any of the other specific grades or categories in the Order.
- There is no limit on the length of time a worker can be employed in the Initial Grade, but a worker who has completed a total of 30 weeks continuous employment with the same employer has a right to the minimum training to meet Standard Worker qualifications or competences at the employer's expense.

4.4 Standard Worker – Grade 2 (*Article 5*)

- To qualify as a Standard Worker a worker must hold a vocational qualification of at least NVQ Level 2 or a single certificate of competence for the relevant agricultural sector as specified in *Schedules 1 and 2A*. The relevant agricultural sector is the sector in which the worker is working on becoming a Standard Worker in their current employment. A worker who is mainly unsupervised, or works with animals or drives a tractor or uses powered machinery is also qualified to be a Standard Worker.

4.5 Lead Worker – Grade 3 (*Article 6*)

- There are two routes to becoming a Grade 3 worker. One route is by appointment as a team leader. The other route is by having specified qualifications.

(a) Team Leader

- A worker who works as part of a team and who has been designated by their employer as a Grade 3 Team Leader responsible for leading that team (but not responsible for carrying out disciplinary action in relation to those workers) is qualified for entry to Grade 3. Such a worker may be required to undergo a trial period of up to one month, in which case entry to Grade 3 will not occur until the worker has satisfactorily completed the trial period.

(b) Qualifications

- A Lead Worker is a worker who has obtained one of the vocational qualifications or NPTC/QCF certificates or awards in the relevant agricultural sector specified for entry to the grade as set out in *Article 6* of the Order. The relevant agricultural sector is the sector in which the worker is working on becoming a Lead Worker in their current employment. In addition a worker must have worked in agriculture for an aggregate of at least two years in the last five years.

4.6 Craft Grade – Grade 4 (*Article 7*)

- A Craft Worker is a worker who holds one of the vocational qualifications or NPTC/QCF certificates or awards in the relevant agricultural sector specified for entry to the grade as set out in *Article 7* of the Order. The relevant agricultural sector is the sector in which the worker is working on becoming a Craft Grade Worker in their current employment. The worker must also have worked in agriculture for an aggregate of at least two years in the last five years. A worker who has been continuously employed by the same employer for a period of one year or more since first obtaining the minimum entry requirements for the Grade also has a right to be treated as a Craft Worker. There are also various other qualifications which entitle a worker to entry to the grade as listed in *Article 7* of the Order.
- Workers are excluded from the Craft Grade if they:
 - have forestry craft qualifications but are not working wholly or mainly at that craft;
 - do not have forestry qualifications but are working in the production of timber or in the use of land as woodland (unless that work is incidental to their main work); or
 - have achieved craft grade qualifications whilst working for their current employer, unless the worker is working wholly or mainly at that craft.
- When deciding if a worker is working mainly at a craft, the following points apply:
 - the worker’s employment with their current employer must be considered as a whole;
 - the time working at a craft should include time when the worker is doing general work connected with the craft; and
 - any temporary work of three months or less should be ignored.

4.7 Supervisory Grade – Grade 5 (*Article 8*)

- A worker is in the Supervisory Grade if they have day to day responsibility for supervising work carried out on a farm. This might include responsibility for seeing that the management decisions taken by the employer or a Grade 6 (Farm Management) Worker are implemented and is likely to be able to take certain operational decisions independently but not those relating to the overall management of the farm or enterprise.
- The responsibilities of a Grade 5 worker could include:
 - informing other workers what they are to do on a day to day basis;
 - responsibility for seeing that the work is done satisfactorily;
 - instructing workers;
 - dealing with poor performance;

- dealing with misconduct short of dismissal.
- A worker who is responsible for the instruction and supervision of staff including responsibility for disciplining staff is also a Grade 5 worker.

4.8 Farm Management Grade – Grade 6 (Article 9)

- A worker in the Farm Management Grade will have responsibility for an entire farm or part of it run as a separate operation or business. They may also have responsibility for employing and disciplining staff together with responsibility for dismissing staff or, where appropriate, responsibility for making recommendations to their employer for the dismissal of staff they manage directly.

4.9 Flexible Workers (Articles 10 and 11)

- There are two types of flexible workers: full-time and part-time. Where a Flexible Working Agreement has been negotiated the working hours need not be the same on each day. However, for a full-time flexible worker, the flexible working agreement must specify that 39 basic hours are to be worked over three, four or five days each week (or that 39 basic hours are averaged over a two or three week period). Neither the employee nor the employer can change the weekly working days without the agreement of the other. The agreement must also specify that the maximum number of basic hours on any day must not be more than ten.
- Full-time flexible workers are required to work on Sundays at basic rates, but an alternative day off must be allowed during the rest of the week.
- The rules for part-time flexible workers (that is, those flexible workers who work for fewer than 39 basic hours each week) are similar to those that apply to full-time flexible workers. However, part-time flexible workers must work their basic hours over six days each week, work on Sundays at basic rates and, on at least one day a week, work between eight and ten basic hours.

4.10 Trainees (Article 15)

- Trainees are principally engaged to receive training or work experience. Under the Order there are four different types of trainees:
 - those participating in agricultural training schemes approved by the Secretary of State for Business, Innovation and Skills as training for young people and provided in England under contract to the Young People's Learning Agency or the Department for Education and Skills in Wales;
 - those undertaking work experience in agriculture required as part of the Diploma in Environmental and Land-based Studies for 14-19 year olds;
 - those participating in the second phase of the European Leonardo da Vinci Programme who are undertaking agricultural work as part of that scheme; and
 - those who were trainees under previous Agricultural Wages Orders and who are continuing with that training engagement.

4.11 Apprentices (*Article 16*)

- Apprentices are those workers who are employed under specified government arrangements. In England, these arrangements are known as Apprenticeships and Advanced Apprenticeships. In Wales, the arrangements are known as Foundation Modern Apprenticeships or Modern Apprenticeships. In the first and second year of their apprenticeship there is a special rate of pay, but other minimum terms and conditions under the Order are the same as those that would apply to a Grade 2 worker. In the third and any subsequent year of apprenticeship both pay and other minimum terms and conditions are the same as for a Grade 2 worker.

5. Agricultural Minimum Wage Rates

5.1 General

- Part 3* of the Order sets out the general principles which apply to the payment of agricultural workers. *Part 4* sets out the minimum rates of pay, including overtime rates, that each agricultural worker is entitled to receive, apart from the rates for holiday pay and other leave which are given in *Part 10* and Agricultural Sick Pay (ASP) which are in *Part 11*.
- The principal minimum wage rates for agricultural work, which apply from 1 October 2012, are set out below. For full details of all the minimum rates of pay set by the Board you should refer to the appropriate Part of the Order.
- During the week in which the Order commences a worker must be paid the rates specified in the Order (or the appropriate proportion of the weekly rate) for those days which fall on or after the commencement date of the Order.

5.2 Minimum Rates of Pay for Grades 1-6 (*Articles 25 and 26*)

- The minimum rates of pay set out in the table below apply to all workers in Grades 1-6 who are not full-time or part-time flexible workers.

Minimum rates of pay for Grades 1-6			
	Weekly Pay	Hourly Pay	Overtime Pay
	£/week	£/hour	£/hour
Grade 1 of compulsory school age	-	3.11	4.67
Grade 1 above compulsory school age	242.19	6.21	9.32
Grade 2	271.44	6.96	10.44
Grade 3	298.74	7.66	11.49
Grade 4	320.19	8.21	12.32
Grade 5	339.30	8.70	13.05

Grade 6	366.60	9.40	14.10
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5.3 Minimum Rates of Pay for Apprentices (*Article 40*)

- The minimum rates of pay for work undertaken by an Apprentice in the first and second years of their apprenticeship are shown in the table below. Other minimum terms and conditions and allowances are the same as for a Grade 2 Standard Worker.

Minimum rates of pay for an Apprentice			
Age	Weekly Pay	Hourly Pay	Overtime Pay
	£/week	£/hour	£/hour
Any	Year 1 of an Apprenticeship*/Advanced Apprenticeship**		
Any	139.23	3.57	5.36
	Year 2 of an Apprenticeship*/Advanced Apprenticeship**		
16 – 17	143.52	3.68	5.52
18 – 20	194.22	4.98	7.47
21+	241.41	6.19	9.29

Notes: * Foundation Modern Apprenticeship in Wales

** Modern Apprenticeship in Wales.

5.4 Overtime Rates (*Articles 22 and 23*)

- Agricultural workers, other than flexible workers (see sub-section 4.9 above), are entitled to be paid at overtime rates when they:
 - work for the same employer for more than 39 basic hours in any one week or more than 8 in any day
 - work any hours beyond those specified in their contract of employment
 - work on a public or bank holiday
 - work on a day that they would normally have taken as part of their annual holiday entitlement under the Order.
- In addition, workers (other than flexible workers) who were engaged under a contract of employment which started before 1 October 2006 must be paid at overtime rates when the following circumstances apply:
 - the worker works on a Sunday
 - the worker works 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 the next day (if they have one), or the actual time of finishing if they do not normally work on that day.

5.5 On-call Allowance (*Article 33*)

- A worker is on-call when they have agreed with their employer that, on a day they are not at work, they will be contactable by an agreed method and able to reach the place where they may be required to work within an agreed time.
- A worker who is on-call is entitled to an on-call allowance for that period. It is a sum equivalent to two hours overtime pay at the rate applicable to the worker's grade or category under the Order.
- However, the on-call allowance is not payable when a worker who is on-call is called upon by their employer to attend their place of work. Instead, they are entitled to be paid the greater of the following amounts:
 - (a) pay at the overtime rate applicable to their grade or category for the hours worked as a consequence of being on-call; or
 - (b) a sum equivalent to two hours overtime pay at the rate applicable to their grade or category.

5.6 Travelling Time (*Article 18*)

- 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 and should be paid at the appropriate minimum rate for that time.

5.7 Night Work Supplement (*Article 34*)

- Night work rates are not specified for children as they cannot be lawfully employed to undertake night work as defined in the Order. The night work supplement is £1.36 per hour.

5.8 Dog Allowance (*Article 32*)

- 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 £7.63 per week for each dog.

5.9 National Minimum Wage

- Unless a lower rate is set out in the Order all workers are entitled to be paid at least the National Minimum Wage. Employers should therefore ensure that they are familiar with the provisions in the National Minimum Wage Act 1998 and any Regulations made under that Act. Detailed guidance on the National Minimum Wage can be obtained from the Pay and Work Rights Helpline on Freephone 0800 917 2368. For details of the relevant statutory provisions employers should refer to sub-sections 3(9) to 3(15) of the Agricultural Wages Act 1948 (as amended).
- The National Minimum Wage Regulations 1999 have a specific effect on employers of agricultural workers. Employers are required to keep proper records to be able to show, in the event of a challenge, that the worker has been paid at least the agricultural minimum

rate applicable under the relevant Order. In addition, the National Minimum Wage Act 1998 gives workers a right to inspect such records.

- More information about the National Minimum Wage can be found on the internet at www.businesslink.gov.uk

6. Payments in Kind

- If an employer provides a house or other accommodation to a worker this can count as payment in kind of part of the worker's minimum wage under the Order. This only applies to a house when it is provided in accordance with the worker's contract of employment. Where the value of a benefit is given for a week this is assumed to cover seven days. No other benefit can count as payment of part of the worker's minimum wage.
- Under the National Minimum Wage legislation the restriction on the accommodation offset (i.e. the permitted deduction) applies to all living accommodation provided by the employer, whether or not provided under the worker's contract of employment. Employers should refer to the National Minimum Wage legislation and guidance to ensure compliance with it when calculating this benefit in kind.
- Any deduction an employer makes from a worker's wage in respect of a house must be not more than £1.50 a week (unless there has been a revaluation by an Agricultural Wages Committee).
- Similarly any deduction made by an employer from a worker's wage in respect of accommodation other than a house shall not exceed £4.82 for each day in the week for which living accommodation is provided. However, the deduction can only be made if the worker has worked a minimum of 15 hours that week (and any hours of leave taken by the worker in that week under the Order count towards those hours).

7. Trainees

- Trainees who are not employed have no entitlement to holidays or other leave with pay under the Order in respect of time worked under their training contract or work experience. However, the Working Time Regulations 1998 (as amended) make provision for workers so that they are entitled to 5.6 weeks paid leave per year, (subject to a statutory maximum of 28 days). Employers may, however, provide a greater holiday entitlement than that given by those Regulations. In some cases the employer will be responsible for ensuring that the Trainee is given time off in accordance with the provisions in the Working Time Regulations in relation to work done under their training contract. If there is any doubt about responsibilities for ensuring that a Trainee is given the appropriate time off the employer should discuss this with the Young People's Learning Agency in England or the Department for Education and Skills in Wales.

8. Rest breaks

- All workers aged 18 and over are entitled to a rest break of at least 30 minutes where the worker's daily working time is more than five and a half hours unless the worker and their employer agree otherwise. However, this does not apply to those whose working time cannot be measured or predetermined because of the special characteristics of the activity

in which they are engaged. Similarly, it does not apply to workers where they can determine their own working time. Such persons might be, for example, managing executives with autonomous decision taking powers or family workers.

- Regulation 12(4) of the Working Time Regulations requires a worker aged 15-17 to be given a rest break of at least 30 minutes where the worker’s daily working time is more than four and a half hours. Under section 18 of the Children and Young Person’s Act 1933, as amended by the Children (Protection at Work) Regulations 1998, 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.
- The Order allows compensatory rest for a worker who is required to work during a rest period or a rest break. In practice, cases where it is not possible to take compensatory rest due to “exceptional circumstances” will be rare, but will also be self-evident, for example, a foreseeable surge of activity at harvest or lambing time. The flexibility provided for here is not something that could be used on a routine basis.

9. Holidays and Other Leave

- All workers covered by the Order are entitled to annual leave and the other types of leave set out in the Order. Trainees who undertake work outside their training contract or work experience accrue leave entitlements for any work undertaken that does not form part of their training contract or work experience.
- The holiday year begins on 1 October in one year and ends on 30 September of the following year. 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 under the Order.

Annual leave for workers who work for the whole annual leave year for the same employer							
Days worked each week	More than 6	More than 5 but not more than 6	More than 4 but not more than 5	More than 3 but not more than 4	More than 2 but not more than 3	More than 1 but not more than 2	1 or less
Annual leave entitlement	38	35	31	25	20	13	7.5

- Where a public holiday or bank holiday in England and Wales falls on a day when a worker is normally required to work under their contract of employment then if the

employer does not require the worker to work on that public holiday or bank holiday that 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, as set out in the Order, for the hours worked.
- Part of a worker's annual leave entitlement as shown in the above Table may be bought out by agreement between the worker and the employer. The maximum number of days which may be bought out in any leave year is shown in the table below.

Maximum number of annual leave days that may be paid in lieu under this Order							
Days worked each week	More than 6	More than 5 but not more than 6	More than 4 but not more than 5	More than 3 but not more than 4	More than 2 but not more than 3	More than 1 but not more than 2	1 or less
Maximum number of annual leave days under this Order that may be bought out	10	7	3	2.5	2.5	1.5	1.5

- If a worker takes leave to which they are entitled under the Order 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. So, for example, if a worker takes half a day of holiday they are entitled to half a day's holiday pay. If the method used in the Working Time Regulations to calculate holiday pay would result in a worker being entitled to more holiday pay than they would be entitled to under the Order, the worker must receive not less than the sum calculated using the method set out in the Regulations. When calculating holiday pay all employers must therefore take account of both the Order and the Working Time Regulations.
- 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.
- If the worker's gross pay is the same from week to week then the amount of holiday pay is calculated as follows:

Step 1

Calculate the amount of the worker's gross contractual weekly pay (excluding pay for other overtime).

Step 2

Divide that amount (from Step 1) by the days worked each week by the worker.

The resulting figure is the amount of holiday pay due to the worker 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.

- If the worker's gross pay varies from week to week then the amount of holiday pay is calculated by taking the worker's average pay over a period. The period for calculating average pay is 12 weeks if the worker has been employed for 12 weeks or more. If the worker has been employed for fewer than 12 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:

Step 1

Add up the total gross contractual pay (excluding pay for other overtime) due to the worker in the period of 12 weeks (or actual number of weeks for which pay is due to the worker if fewer than 12) immediately preceding the commencement of the worker's holiday.

Step 2

Divide the total (from Step 1) by 12 (or actual number of weeks for which pay is due to the worker if fewer than 12), to ascertain the average weekly pay received by the worker.

Step 3

Divide the average weekly pay (from Step 2) by the days worked each week.

The resulting figure is the amount of holiday pay due to the worker for one day of annual leave. Holiday pay for part of a day of annual leave is calculated as a proportion of the amount that would be payable for a full day of annual leave.

- If a worker works on a public holiday they must be paid at the overtime rate appropriate to their grade or category for the actual hours worked.
- Certain leave may be carried forward by a worker where there is a relevant agreement in accordance with the Working Time Regulations.
- All workers are entitled to bereavement leave after the death of a member of their family who may be a parent, child, spouse or other person with whom the worker had a close relationship. All workers have a minimum bereavement leave entitlement of one day and a maximum entitlement of four days. (*Articles 54 to 57*)
- A worker is entitled to be paid for bereavement leave taken. The amount due for a full day of bereavement leave is calculated in a similar way to holiday pay. (*Article 58*)

10. Agricultural Sick Pay

- Under the Agricultural Sick Pay (ASP) scheme a worker who is off sick receives payment of at least the appropriate agricultural minimum wage for their normal hours worked, including hours that would be worked as guaranteed overtime. All such hours are paid at the basic rate. Any Statutory Sick Pay received by the worker goes towards discharging ASP. To qualify for ASP a worker must have been continuously employed by the same employer for 52 weeks immediately prior to the commencement of the period of sickness. Sickness absence includes any illness or absence due to an injury sustained at work or on

the way to or from work. The Order also sets out other circumstances which count as sickness absence. ASP entitlement varies according to the length of time a worker has been continuously employed by the same employer.

- When a worker falls ill they must immediately tell their employer about their sickness. If the illness lasts for eight days or more the worker must provide their employer with a medical certificate (doctor's note).
- 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 under the Order. However, where the period of absence is less than fourteen days, the first three normal working days do not qualify for ASP.
- 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 that 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.

11. Working Time Regulations

- The following paragraphs provide guidance on the application of some aspects of the Working Time Regulations.
- The Regulations generally limit weekly working time to an average of 48 hours a week over a 17 week period (the averaging period may be extended in certain circumstances). A worker may choose to agree to work more than the average 48 hour weekly limit and in that case the worker and the employer must make an agreement to that effect in writing. The worker has the right to bring such an agreement to an end after giving due notice.
- Where such an agreement is in place the employer must maintain completed records showing which workers have made this type of agreement, and the actual hours worked, and must keep the records for at least two years.
- Information on all aspects of the Working Time Regulations can be found at www.direct.gov.uk for workers and at www.businesslink.gov.uk for employers.

12. Frequently Asked Questions

Agricultural Work

1. Is there a comprehensive list of work covered by the Wages Order?

No. The definition in the Order is not exhaustive. Agriculture covers any activity normally considered to be mainstream farming such as arable farming, poultry farming, sheep rearing, pig farming or beef enterprise. Forestry and horticulture are also covered and the processing and packing of produce prior to the first point of sale.

Minimum Rates of Pay

- 2. If a worker is already paid above the minimum rates of pay stated for their grade in the Order, is the worker entitled to the percentage pay rise each October?**

No. The worker's entitlement is limited to the minimum pay rates given in the Order. It is quite acceptable for an employer to pay above the minimum rates.

- 3. If a worker is paid on piece rates, is the worker still entitled to the Agricultural Minimum Wage?**

Yes. Where piece work earnings fall below the amount due under the Wages Order for each hour worked an employer must make up the pay to the appropriate hourly Agricultural Minimum Wage.

- 4. If a worker is doing a mixture of agricultural and non-agricultural work, is the worker still entitled to the Agricultural Minimum Wage?**

The worker would be entitled to the Agricultural Minimum Wage for every hour of agricultural work done and the National Minimum Wage for every hour of non-agricultural work done.

- 5. Should rest breaks be paid?**

No. Rest breaks are not required to be paid.

Overtime

- 6. What is guaranteed overtime?**

Overtime which a worker has to work under the contract of employment and for which pay is received, whether or not there is work for them to do.

- 7. If a worker does work on a Sunday, are they entitled to overtime pay?**

If the worker has continued working for their current employer since October 2006 the worker would be entitled to overtime pay for Sunday working, irrespective of hours worked in the week or on that day. Otherwise the worker should receive overtime pay for work on a Sunday, only if 39 basic hours had already been worked for the same employer during the week or if the worker works more than eight hours on a Sunday or works hours on a Sunday beyond their normal contractual working hours.

- 8. If overtime hours are not guaranteed can they be counted towards holiday or sick pay entitlement?**

No. Other overtime is disregarded.

Training

9. If an employer wants a worker to do a training course that runs for three days per week do wages still have to be paid?

Yes. If the training is carried out during normal working hours the worker should be paid for those hours.

10. If a student at Agricultural College does a work placement on a farm for a year is the student entitled to be paid?

Under the provisions of the Order, the student may be classed as a Trainee. Trainees are not entitled to be paid whilst undertaking work which is part of their training contract but if they do additional work outside their training contract, for example at weekends, they are entitled to overtime rates for the hours worked.

Accommodation

11. Does the accommodation charge in the Order for a caravan include charges for utilities?

Yes. An employer may wish to make additional charges for utilities and under certain circumstances this may be permissible, but the deduction can only be made from net pay with the prior written consent of the worker.

Holidays

12. Does the holiday entitlement in the Order include bank holidays?

Yes. For a four day or more per week worker the annual holiday entitlement includes all eight bank holidays. It is pro-rata for workers working fewer than four days per week.

13. If a Bank Holiday falls on a day that a worker does not normally work does the worker have to use a day of their Annual Leave?

No. The worker does not have to do anything. The worker would only need to use a day of their Annual Leave if the Bank Holiday fell on a day on which they are normally required to work.

14. Can any days of unused holiday be carried over from one year to the next?

Not under the Order. This provision was taken out of the Order in 2008.

15. What payment should be made if a worker works on a Public Holiday and what happens about the holiday entitlement?

The appropriate overtime rate for the hours worked should be paid. Any accrued holiday remains to be taken if the worker works on a public holiday, whether or not that day is one of their normal working days.

Paternity provisions

16. Are agricultural workers entitled to Paternity Leave as it is not mentioned in the Order?

Yes. This is part of a statutory provision.

17. Is the Birth Grant taxable?

Yes.

Agricultural Wages Sick Pay

18. Can an employer claim Agricultural Sick Pay back from the government?

No. ASP payments may be recoverable if the employer has a private insurance arrangement.

13. Useful Contacts

The following names and addresses give information on various publications and contact telephone numbers which employers and workers may find useful.

Individual Rights of Employees

For information about the provisions or enforcement of the Wages Order contact:

The Pay and Work Rights Helpline: tel. Freephone 0800 917 2368

Statutory Sick Pay (SSP)

Employers' obligations under the SSP scheme are contained in the Employers' Manual to SSP (E14) which is available free of charge. An Employees' Guide to SSP is available at 0845 302 1479.

contact:

Local Inland Revenue or Benefits Agency Offices

Employers' Helpline: 0845 714 3143

Website: www.hmrc.gov.uk

Working Tax Credit

contact:

Local Inland Revenue Offices
Helpline: 0845 300 3900
Website as above

Young People's Learning Agency

contact:
The Young People's Learning Agency
Cheylesmore House
Quinton Road
Coventry
CV1 2WT
Tel: 0845 337 200
Website: www.ypla.gov.uk

General Employment Matters

The Advisory Conciliation and Arbitration Service (ACAS) publishes advisory handbooks, codes of practice, and advice leaflets including employment matters such as lay-offs, contracts, bullying, and harassment.

contact:
ACAS
Helpline: 0845 7474747
Website: www.acas.org.uk

National Minimum Wage

Information on the National Minimum Wage can be found at www.businesslink.gov.uk

Agricultural Minimum Wage

Information about the Agricultural Minimum Wage can also be found at www.direct.gov.uk and www.businesslink.gov.uk

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