



Llywodraeth Cymru
Welsh Government



Agricultural Wages in Wales 2018

A Guide for Workers and Employers

Issue 2

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

1. Introduction

The Agricultural Sector (Wales) Act 2014 (the Act) provides for the establishment of an Agricultural Advisory Panel for Wales (the Panel). The Panel was established 1 April 2016. Its functions include reviewing wages and other terms and conditions of employment, drafting agricultural wages orders and promoting career development in the agricultural sector.

The Agricultural Wages (Wales) Order 2018 (the 2018 Order) replaces and revokes the Agricultural Wages (Wales) Order 2017 and increases the minimum wages rates and certain allowances.

For reference, the Agricultural Wages (Wales) Order 2017 (the 2017 Order) replaced the Agricultural Wages (Wales) Order 2016. The 2017 Order was made in November 2017 and applied as if it had come into force on 1 April 2017.

The statutory rates of pay and allowances specified by the 2018 Order will stay in force until a new agricultural wages order, which amends the rates of pay and allowances, is made.

This guidance provides information about conditions and levels of pay for six grades of agricultural workers as set out in the Order. Detailed descriptions are provided for each grade.

For convenience, the main entries in this guidance have been separately cross referenced to the corresponding articles in the Order.

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

Strategy and Policy Unit – Legislation Development Team

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The information contained in this publication is for guidance only and should not be regarded as legal advice on the Order or other legal matters.

Please consult the Agricultural Wages (Wales) Order 2018 for details of the current pay and allowance levels.

www.beta.gov.wales/agricultural-wages-minimum-rates-2018

2. Agricultural Wages Orders

Who is affected by agricultural wages orders?

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

What is the relationship between the agricultural minimum wage and the National Minimum/Living Wage?

It is anticipated that the National Living Wage rate will change on 1 April each year. The rate applies to all workers aged 25 and above, including agricultural workers.

Where the National Minimum Wage becomes higher than the minimum rate prescribed under the 2018 Order the National Minimum Wage will need to be respected.

The National Minimum Wage rates apply to agricultural workers under the age of 25 who need to be paid in accordance with these rates. It is anticipated that these will change on 1 April each year.

3. The Agricultural Wages (Wales) Order 2018

When did the Order come into force?

The 2018 Order came into force on 1 April 2018.

What were the main effects of the Order?

The 2018 Order revoked and replaced the Agricultural Wages (Wales) Order 2017. The 2018 Order increases the minimum rates of pay, as well as the following payment/allowances (Article 16), the dog allowance, the night work allowance, and the birth and adoption grant. All other provisions of the 2017 Order are maintained.

4. The Agricultural Wages (Wales) Order 2017

When was the 2017 Order in force?

The 2017 Order was made in November 2017 and applied as if it had come into force on 1 April 2017. It has been revoked by the 2018 Order.

What were the main changes introduced by the 2017 Order which are now provisions of the 2018 Order?

a. The 2017 Order **increased the minimum rates** of pay and certain allowances for agricultural workers, by varying amounts. The 2018 Order replaces those rates.

Including overtime in the calculation of holiday pay

b. The 2017 Order introduced a provision which requires employers to include overtime and allowances in the calculation of holiday pay. This is included in the 2018 Order.

On-call allowance

c. The 2017 Order corrected the provision on the on-call allowance which is a one-off payment of a sum equivalent to two times the hourly overtime rate. This is included in the 2018 Order.

Change to the method for calculating holiday entitlement for agricultural workers with variable hours

d. The 2017 Order introduced a rolling 12 week reference period for calculating the holiday entitlement of agricultural workers with variable hours. At the end of the annual leave year there is to be a reckoning process. This will determine whether the agricultural worker has (a) taken the appropriate amount of holiday in accordance with Schedule 5 of the 2017 Order, (b) accrued but not taken all of the holiday they are entitled to in accordance with Schedule 5, or (c) taken more holiday than their entitlement in accordance with Schedule 5.

This replaced the previous period for calculation which ran from the 1st day of the annual leave year to the day before the commencement of the agricultural worker's annual leave. The annual leave year for agricultural workers runs from **1 October to 30 September**.

This is included in the 2018 Order.

Flexible workers

e. The 2017 Order removed all reference to the category of flexible agricultural workers. There is no change to this in the 2018 Order.

Flexible agricultural workers may be working under written agreements of no less than 12 months in duration, with their employers. These agreements, including rates of pay, will continue until the contract term comes to an end, or the agreement is terminated in accordance with the provisions of the agreement itself e.g. by giving notice of termination. It is only when the existing agreement comes to an end that the terms and conditions of employment between the employer and the flexible agricultural worker can be re-negotiated as appropriate (unless both parties mutually agree to vary the terms of any existing agreements).

5. Minimum Rates of Pay for the six Grades of agricultural worker

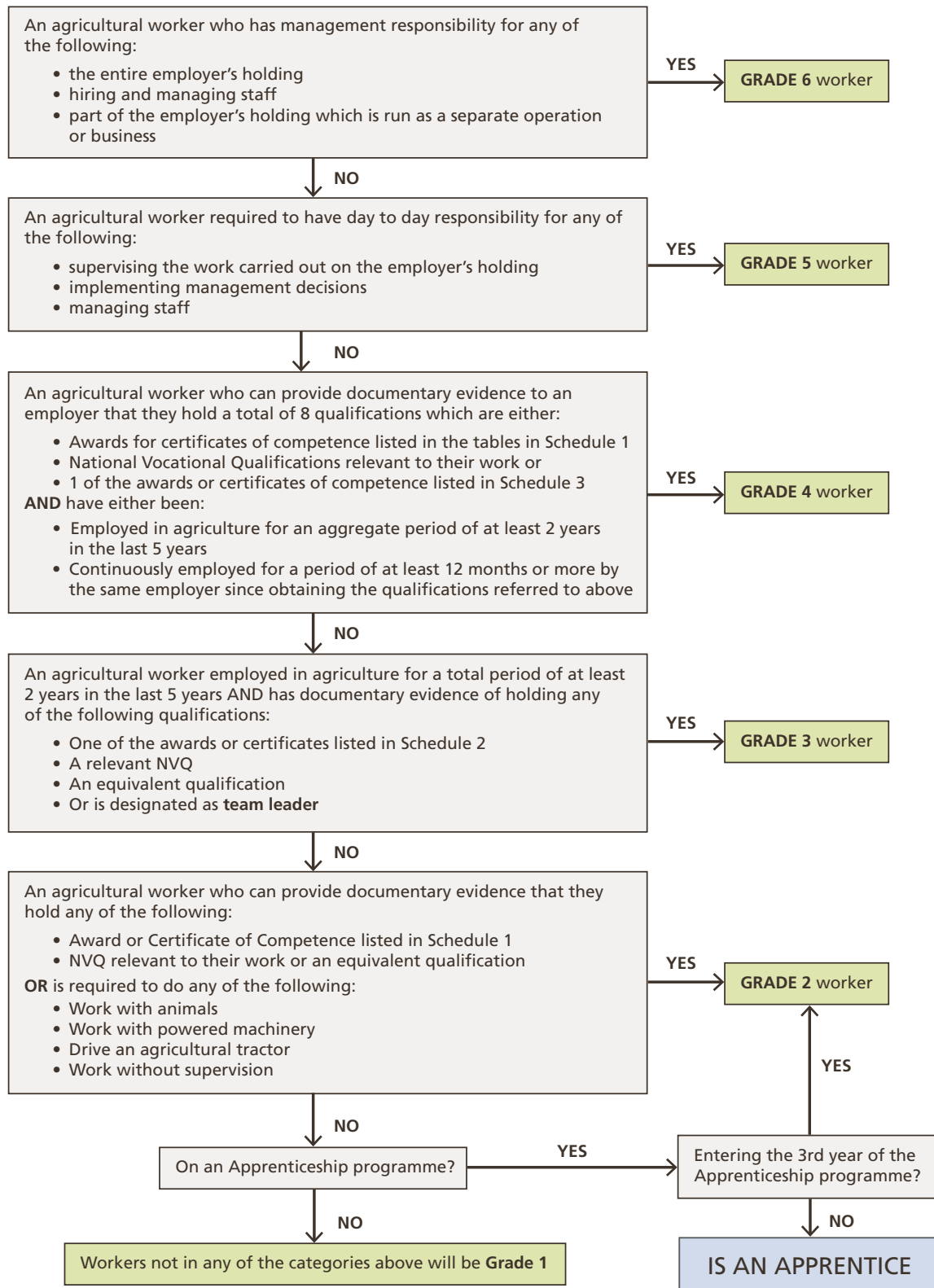
What are the current minimum rates of the agricultural minimum wage? (Schedule 4)

The 2018 Order contains minimum hourly rates of pay and terms and conditions of employment. The current applicable rates for grades 1-6 are set out below. The overtime rate remains unchanged at 1.5 x the appropriate rate below. For clarity and reference the minimum rates for 2017 are also shown.

Grade	2018 rates	2017 rates
Grade 1 Worker of compulsory school age (13-16)	£3.47	£3.34
Grade 1 Worker (16-24 years of age)	£7.38	£7.06
Grade 1 Worker (aged 25+)	£7.83	£7.51
Grade 2 – Standard Worker	£8.29	£7.54
Grade 3 – Lead Worker	£8.54	£8.22
Grade 4 – Craft Grade	£9.16	£8.82
Grade 5 – Supervisory Grade	£9.70	£9.34
Grade 6 – Farm Management Grade	£10.48	£10.09

At which Grade should you be employed?

The 2018 Order differentiates between six grades of workers based on qualifications, work responsibility and experience in agriculture. An agricultural worker who can satisfy the criteria set out in articles 5-9 of the 2018 Order or as a Grade 1 worker or an apprentice must be employed at the relevant grade.



What are the overtime rates (Article 13)?

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 of service;
- on a public or bank holiday.

f. Overtime rates are specified as 1.5 times above the applicable basic hourly pay of the worker for all grades and categories of workers. Employers are required to include overtime and allowances in the calculation of holiday pay.

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;
- 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).

6. When is an Agricultural worker classed as an Apprentice (Article 11)?

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; and
- They are within the first 12 months after the commencement of that employment under 19 years of age.
- 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.

What are the minimum rates of pay for Apprentices (Schedule 4)?

Apprentice year and age	Minimum rate 2018	Minimum rate 2017
Year 1 Apprentice	£3.93	£3.78
Year 2 Apprentice (aged 16-17)	£4.21	£4.05
Year 2 Apprentice (aged 18-20)	£5.90	£5.60
Year 2 Apprentice (aged 21-24)	£7.38	£7.05
Year 2 Apprentice (aged 25+)	£8.05	£7.50

7. Holiday Entitlement (Articles 30-38, Schedules 5 and 6)

All workers covered by the 2018 Order are entitled to annual leave and other types of leave, as set out in the Order.

The calculation of holiday pay includes any allowances paid to the Agricultural Worker on a consistent basis, including overtime. This is in line with recent case law which affected the calculation on holiday pay in other sectors.

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.

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 34)

If a worker takes leave to which they are entitled under the 2018 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. 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 (excluding pay for other overtime).
2. Divide that amount (from 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 2, contracted to work 30 hours per week (without guaranteed overtime) and works 5 days per week:

1. $£8.29$ (hourly pay of Grade 2 worker) $\times 30 = £248.70$.
2. $£248.70 \div 5$ (days worked per week) $= £49.74$.
3. The amount of holiday pay is $£49.74$ per day for the worker.

If the worker is taking a half-day as leave, then the amount of holiday pay is $£24.87$ which is half of the full day holiday pay of $£49.74$.

Holiday pay for workers with varied weekly earnings

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 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:

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

Example:

A worker employed at Grade 3 with varying hours, working 5 days a week:

Week	1	2	3	4	5	6	7	8	9	10	11	12
Hours worked	20	25	30	32	39	39	25	28	19	33	25	33
Weekly pay (£)	170.80	213.50	256.20	273.28	333.06	333.06	213.50	293.12	162.26	281.82	213.50	281.82

1. Total weekly pay for the 12 week period = $£3025.92 \div 12 = £252.16$.
2. Daily rate = $£252.16 \div 5 = £50.43$.

The worker is entitled to £50.43 per day in holiday pay. If the worker is taking a half day leave, then the amount of holiday pay is £25.22, half of the full day holiday pay (£50.43).

Example:

A worker with varying working days a week:

If the days worked each week by the worker vary, then it is important to calculate the average days worked each week. This can be calculated by adding the number of days worked each week over a 12 week period and divide it by 12.

Using the same example as above:

Week	1	2	3	4	5	6	7	8	9	10	11	12
Hours worked	20	25	30	32	39	39	25	28	19	33	25	33
Days worked	3	4	5	5	6	5	4	5	3	5	4	5

Total days worked = 54 Average days per week worked $54/12 = 4.5$.

$4.5 \times$ the daily rate of £50.43 = average weekly rate £226.94.

8. Are workers entitled to Agricultural Sick Pay (ASP)? (Articles 18-27)

Under the 2018 Order 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 the agricultural worker's pregnancy or suffered as a result of childbirth;
- 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;
- 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;
- any injury suffered when not travelling to or from their place of work.

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

Number of months the worker has been continuously employed	Number of weeks agricultural sick pay is permitted
At least 12 but not 24	13
At least 24 but not 36	16
At least 36 but not 48	19
At least 48 but not 59	22
59 or more	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 (doctor's 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 under the 2018 Order.

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 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.

Any 2 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.

9. How do we determine the amount of Agricultural Sick Pay (ASP) (Article 22)?

ASP is payable at a rate which is equivalent to the worker's 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 3 days of the sickness absence before calculating the entitlement.

Example:

If a Grade 4 worker is contracted to work 30 hours each week spread over 5 days, the daily contractual hours worked is:

$$30 \div 5 = 6 \text{ hours (1 day).}$$

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).

$$1 \text{ day (6 hours)} = 6x @ \text{£}9.16 \text{ (the workers' basic hourly rate)} = \text{£}54.96.$$

The worker is entitled to 5 x daily rate = £274.80 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 the figure (from 1) by 8. This will provide the average hours worked per week.
3. Divide the average hours worked (from 2) with the 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 is employed at Grade 2 without fixed hours and is absent through illness for 14 days:

Week	1	2	3	4	5	6	7	8	9	10	11	12
Hours worked	20	25	30	32	39	39	25	28	19	33	25	33

1. 8 weeks $20 + 25 + 30 + 32 + 39 + 39 + 25 + 28 = 238$.
 2. $238 \div 8 = 29.75$ (average weekly hours).
 3. $29.75 \div 5 = 5.95$ is the average hours worked per day.
(5.95×14) \times £8:29 (the workers' basic hourly rate) = £690.56.
- The worker is entitled to £690.56 in ASP.

10. Are agricultural workers entitled to bereavement leave (Articles 39-41)

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 lived as husband and wife without being legally married, or someone with whom the agricultural worker lives as if they were in a civil partnership.

All workers have a minimum bereavement leave entitlement of one day and a maximum entitlement of four days.

11. Miscellaneous Conditions

Rest Breaks (Article 28)

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 to the extent permitted by or under the Working Time Regulations 1998.

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 2018 Order allows compensatory rest for a worker who is required to work during a rest period or a rest break. In cases where 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 would be a foreseeable surge of activity at harvest or lambing time. The flexibility provided for here is applicable in exceptional circumstances only, and it not something that could be used on a routine basis.

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 1 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 2 worker.

Young workers of compulsory school age (Article 12 and Schedule 4)

The 2018 Order specifies pay for young workers of compulsory school age, meaning workers, at £3.34 per hour. Please note that the NMW stipulates a rate for 16 year olds at £3.90. 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/minimum-ages-children-can-work.

Output work (Piece work) (Article 14)

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 under the 2018 Order.

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.

Accommodation allowance (Article 15)

The 2018 Order allows the employer to deduct no more than £1.50 per week from the minimum wage otherwise payable where a worker is provided with a house by the employer. Where the employer provides other accommodation, the employer may not deduct more than £4.82 per day, as long as the worker has worked for a minimum of 15 hours for their employer in that week.

There are 4 payments which do not form part of an agricultural worker's 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 £8.02 per week for each dog.

On-call allowance (Article 16(b))

On call means an arrangement between the worker and their employer which means that when the worker is not at work that 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. The on-call allowance is a one-off payment equivalent to two times the hourly overtime rate of pay applicable to the worker.

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 £1.52 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 £63.09.

12. Cases of suspected non-compliance, enquiries

Where you suspect that the provisions of the 2018 Order have not been, or are not being, complied with, or you wish to comment on the 2018 Order, please contact the helpline or send us your comments. If you would like someone to ring you please state your number clearly.

Please contact the helpline for information or to raise a complaint under the 2018 Order: 0300 062 5004.

Or send your concerns in writing by email to: SLM Enquiries@wales.gsi.gov.uk or by post to:

Strategy and Policy Unit – Legislation Development Team
Welsh Government
Government Building
Spa Road East
Llandrindod Wells
Powys
LD1 5HA

Tel: 0300 062 5004

Your complaint/enquiry will be treated as confidential.

13. Useful contacts

Rural Payments Wales

The opening hours are:

Monday to Thursday 8:30am until 5pm Friday 8:30am until 4:30pm.

Alternatively, you can contact us via our postal address:

Rural Payments Wales

P.O. Box 1081

Cardiff

CF11 1SU

Telephone: 0300 062 5004

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NFU Cymru

Agriculture House

Royal Welsh Showground

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LD2 3TU

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Email: nfu.cymru@nfu.org.uk

FUW

Farmers' Union of Wales

Llys Amaeth

Plas Gogerddan

Aberystwyth

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SY23 3BT

Telephone: 01970 820820

Fax: 01970 820821

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CLA

Country Landowners Association – Wales Office

CLA Cymru

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Merthyr Tydfil

CF48 1DL

Telephone: 01547317085

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LANTRA

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LD2 3WY

Telephone: 01982 552646
Email: wales@lantra.co.uk www.lantra.co.uk

YFC

Royal Welsh Showground
Llanelwedd
Builth Wells
Powys
LD2 3NU

Telephone: 01982 553502
Email: www.yfc-wales.org.uk

TFA Cymru

Tenant Farmers Association
Brewery Court
Theale
Reading
Berkshire
RG7 5AJ

Telephone: 0118 930 6130
Fax: 0118 930 3424
Email: tfa@tfa.org.uk www.tfa.org.uk

Citizens Advice Bureau

www.citizensadvice.org.uk/wales

Citizens Advice consumer helpline: 03454 04 05 06

Textphone: 18001 03454 04 05 06 Monday to Friday, 9am to 5pm

To contact a Welsh-speaking adviser: 03454 04 05 05

Textphone to contact a Welsh-speaking adviser: 18001 03454 04 05 05

Closed on bank holidays.