
WELSH STATUTORY INSTRUMENTS

2016 No. 107

The Agricultural Wages (Wales) Order 2016

PART 1

Preliminary

Title, commencement and application

1.—(1) The title of this Order is the Agricultural Wages (Wales) Order 2016 and it comes into force on 26 February 2016.

(2) This Order applies in relation to Wales.

Interpretation

2.—(1) In this Order—

“basic hours” (*“oriau sylfaenol”*) means 39 hours of work per week, excluding overtime, worked in accordance with either an agricultural worker’s contract of service or an apprenticeship;

“birth and adoption grant” (*“grant geni a mabwysiadu”*) means a payment that an agricultural worker is entitled to receive from their employer on the birth of their child or upon the adoption of a child and is payable—

- (i) where the agricultural worker has given their employer a copy of the child’s Birth Certificate or Adoption Order (naming the worker as the child’s parent or adoptive parent) within 3 months of the child’s birth or adoption; and
- (ii) in circumstances where both parents or adoptive parents are agricultural workers with the same employer, to each agricultural worker;

“compulsory school age” (*“oedran ysgol gorfodol”*) has the meaning given in section 8 of the Education Act 1996(1);

“guaranteed overtime” (*“goramser gwarantedig”*) means overtime which an agricultural worker is obliged to work either under their contract of service or their apprenticeship and in respect of which the agricultural worker’s employer guarantees payment, whether or not there is work for the agricultural worker to do;

“hours” (*“oriau”*) includes a fraction of an hour;

“house” (*“ty”*) means a whole dwelling house or self-contained accommodation that by virtue of the agricultural worker’s contract of service the agricultural worker is required to live in for the proper or better performance of their duties and includes any garden within the curtilage of such a dwelling house or self-contained accommodation;

“night work” (*“gwaith nos”*) means work (apart from overtime hours) undertaken by an agricultural worker between 7 p.m. on one evening and 6 a.m. the following morning, but excluding the first two hours of work that an agricultural worker does in that period;

(1) 1996 (c.56).

“on-call” (“*ar alwad*”) means an 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; and

“other accommodation” (“*llety arall*”) means any living accommodation other than a house which—

- (a) is fit for human habitation;
- (b) is safe and secure;
- (c) provides a bed for the sole use of each individual agricultural worker; and
- (d) provides clean drinking water, suitable and sufficient sanitary conveniences and washing facilities for agricultural workers in accordance with regulations 20 to 22 of The Workplace (Health, Safety and Welfare) Regulations 1992(2) as if the accommodation was a workplace to which regulations 20 to 22 of those Regulations applied;

“overtime” (“*goramser*”) means—

- (a) in relation to an agricultural worker, other than a flexible worker, who began their employment prior to 1 October 2006, time that is not guaranteed overtime worked by the agricultural worker—
 - (i) in addition to an 8 hour working day;
 - (ii) in addition to the agreed hours of work in their contract of service;
 - (iii) on a public holiday,
 - (iv) on a Sunday; or
 - (v) in any period commencing on a Sunday and continuing to the following Monday up until the time that worker would normally start their working day;
- (b) in relation to all other agricultural workers, time that is not guaranteed overtime worked by the agricultural worker—
 - (i) in addition to an 8 hour working day (or, in the case of a flexible agricultural worker or a part time flexible agricultural worker a ten hour working day);
 - (ii) in addition to the agreed hours of work in their contract of service; or
 - (iii) on a public holiday;

“output work” (“*gwaith allbwn*”) means work which, for the purposes of remuneration, is measured by the number of pieces made or processed or the number of tasks performed by an agricultural worker;

“qualifying days” (“*diwrnodau cymwys*”) means days on which the agricultural worker would normally be required to be available for work apart from any days on which the agricultural worker—

- (a) was taking annual leave;
- (b) was taking bereavement leave; or
- (c) was taking statutory maternity, paternity or adoption leave;

“sickness absence” (“*absenoldeb salwch*”) means the absence of an agricultural worker from work due to incapacity by reason of—

- (a) any illness suffered by the agricultural worker;
- (b) illness or incapacity caused by the agricultural worker’s pregnancy or maternity;
- (c) an injury that occurs to the agricultural worker at the agricultural worker’s place of work;

- (d) an injury that occurs to the agricultural worker when travelling to or from their place of work;
- (e) time spent by the agricultural worker recovering from an operation caused by an illness; or
- (f) time spent by the agricultural worker 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,

but does not include any injury suffered by the agricultural worker when not at their place of work nor any injury suffered when the agricultural worker is not travelling to or from their place of work;

“travelling” (“*teithio*”) means a journey by a mode of transport or a journey on foot includes—

- (a) waiting at a place of departure to begin a journey by a mode of transport;
- (b) waiting at a place of departure for a journey to re-commence either by the same or another mode of transport, except for any time the agricultural worker spends taking a rest break; and
- (c) waiting at the end of a journey for the purpose of carrying out duties, or to receive training, except for any time the agricultural worker spends taking a rest break;

“working time” (“*amser gweithio*”) means any period during which an agricultural worker is working at their employer’s disposal and carrying out activities or duties in accordance with either their contract of service or their apprenticeship and includes—

- (a) any period during which an agricultural worker is receiving relevant training;
- (b) 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;
- (c) any period during which an agricultural worker is prevented from carrying out activities or duties in accordance with their contract of service or their apprenticeship due to bad weather; and
- (d) any additional period which the employer and the agricultural worker agree is to be treated as working time,

and references to “work” (“*gwaith*”) are to be construed accordingly.

(2) In this article the reference to agricultural workers who began their employment prior to the 1 October 2006 includes agricultural workers—

- (a) whose contract terms have since been subject to any variation; or
- (b) who have since been employed by a new employer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽³⁾.

(3) References in this Order to a period of continuous employment are to be construed as a period of continuous employment computed in accordance with sections 210 to 219 of the Employment Rights Act 1996⁽⁴⁾.

⁽³⁾ S.I. 2006/246.

⁽⁴⁾ 1996 (c. 18)

PART 2

Agricultural workers

Terms and conditions of employment

3. An agricultural worker's employment is subject to the terms and conditions set out in this Part and Parts 3, 4 and 5 of this Order.

Grades and categories of agricultural worker

4. An agricultural worker must be employed as a worker at one of the Grades specified in articles 5 to 9 or 10(1) or as an apprentice in accordance with the provisions in article 11.

Grade 2

5. An agricultural worker who—

- (a) provides documentary evidence to an employer that they hold—
 - (i) one of the awards or certificates of competence listed in the tables in Schedule 1;
 - (ii) one National Vocational Qualification relevant to their work; or
 - (iii) an equivalent qualification; or
- (b) is required to—
 - (i) work without supervision;
 - (ii) work with animals;
 - (iii) work with powered machinery; or
 - (iv) drive an agricultural tractor

must be employed as a worker at Grade 2.

Grade 3

6.—(1) An agricultural worker who has been employed in agriculture for an aggregate period of at least 2 years in the previous 5 years and who—

- (a) provides documentary evidence to an employer that they hold—
 - (i) one of the awards or certificates of competence listed in the tables in Schedule 2;
 - (ii) one National Vocational Qualification relevant to their work; or
 - (iii) or an equivalent qualification; or
- (b) is designated as a team leader,

must be employed as a worker at Grade 3.

(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 by or on behalf of their employer but is not responsible for disciplinary matters.

Grade 4

7. An agricultural worker who—

- (a) provides documentary evidence to an employer that they hold a total of 8 qualifications which are either—

- (i) awards or certificates of competence listed in the tables in Schedule 1 ;
 - (ii) National Vocational Qualifications relevant to their work; or
 - (iii) equivalent qualifications; or
- (b) provides documentary evidence to an employer that they hold 1 of the awards or certificates of competence listed in the tables in Schedule 3 or an equivalent qualification; and
- (c) who has either—
- (i) been employed in agriculture for an aggregate period of at least 2 years in the last 5 years; or
 - (ii) been continuously employed for a period of at least 12 months or more by the same employer since obtaining the qualifications referred to in paragraphs (a) and (b),
- must be employed as a worker at Grade 4.

Grade 5

8. An agricultural worker who is required to have day to day responsibility—
- (a) for supervising the work carried out on the employer’s holding;
 - (b) for implementing management decisions; or
 - (c) for managing staff,
- must be employed as a worker at Grade 5.

Grade 6

9. An agricultural worker who is required to have management responsibility—
- (a) for the entire of the employer’s holding;
 - (b) for part of the employer’s holding which is run as a separate operation or business; or
 - (c) for hiring and managing staff,
- must be employed as a worker at Grade 6.

Continued Professional Development

10.—(1) An agricultural worker who cannot be employed at one of the Grades 2 to 6 in accordance with the provision in articles 5 to 9 of this Order and who is not an apprentice in accordance with article 11 must be employed as a worker at Grade 1.

(2) An apprentice in the third year and any subsequent year of their apprenticeship is to be subject to the minimum rates of pay and other terms and conditions in this Order that apply to agricultural workers employed at Grade 2.

- (3) An agricultural worker must—
- (a) maintain documentary evidence of qualifications and experience gained by them that is relevant to their employment; and
 - (b) inform their employer if they have gained qualifications and experience that enables them to be employed at a different Grade.

Apprentices

11.—(1) An agricultural worker is an apprentice employed under an apprenticeship if—

- (a) they are employed under either a contract of apprenticeship, an apprenticeship agreement within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009⁽⁵⁾ or are treated as employed under a contract of apprenticeship; and
- (b) they are within the first 12 months after the commencement of that employment under 19 years of age.

(2) An agricultural worker must be treated as employed under a contract of apprenticeship if they are engaged in Wales under Government arrangements known as Foundation Apprenticeships, Apprenticeships or Higher Apprenticeships.

(3) In this article “Government arrangements” means arrangements made under section 2 of the Employment and Training Act 1973⁽⁶⁾ or under section 17B of the Jobseekers Act 1995⁽⁷⁾.

Flexible workers

12.—(1) An agricultural worker is a full time flexible worker if they are employed as a worker at Grades 1 to 6 in accordance with articles 5 to 9 or 10(1) of this Order and they have entered into a written agreement which has a minimum duration of at least 1 year and which—

- (a) requires the agricultural worker to work basic hours either weekly or during a 2 or a 3 week period, such hours to be worked over 4, 5 or 6 days per week;
- (b) does not require the agricultural worker to work more than 10 basic hours on any 1 day; and
- (c) ensures that where an agricultural worker is required to work on a Sunday, they will not be required to work on one working day during the following week.

(2) An agricultural worker is a part time flexible worker if they are employed as a worker at Grades 1 to 6 in accordance with articles 5 to 9 or 10(1) of this order and they have entered into a written agreement which has a minimum duration of at least 1 year and which—

- (a) requires the agricultural worker to work for fewer than the basic hours per week, such hours to be worked over 6 days in any week; and
- (b) either requires the worker to work on Sundays or to work between 8 and 10 basic hours on at least 1 day in any week.

(3) The agricultural worker is to be permitted to have trade union representation at any discussions during the preparation of the flexible working agreement.

PART 3

Agricultural minimum wage

Minimum rates of pay

13.—(1) Subject to the operation of section 1 of the National Minimum Wage Act 1998⁽⁸⁾, agricultural workers must be remunerated by their employer in respect of their work at a rate which is not less than the agricultural minimum wage.

(5) 2009 (c.22).

(6) 1973 (c.50). Relevant functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

(7) 1995 (c.18). Section 17B is repealed by section 147 of and Part 4 of Schedule 14 to the Welfare Reform Act 2012 (2012 c.5). The repeal has effect for certain purposes pursuant to S.I. 2013/983 and S.I. 2013/1511.

(8) 1998 (c.39).

(2) The agricultural minimum wage is the minimum hourly rate specified in the Table in Schedule 4 as being applicable to each grade of agricultural worker, to apprentices and to flexible workers.

Minimum rates of pay for overtime

14. Agricultural workers must be remunerated by their employer in respect of overtime worked at a rate which is not less than 1.5 times the agricultural minimum wage specified in article 13 and Schedule 4 which is applicable to their grade or category.

Minimum rates of pay for output work

15. Agricultural workers must be remunerated by their employer in respect of output work at a rate which is not less than the agricultural minimum wage specified in article 13 and Schedule 4 which is applicable to their grade or category.

Accommodation offset allowance

16.—(1) Where in any week an employer provides an agricultural worker with a house for the whole of that week, the employer may, subject to paragraph (2), deduct the sum of £1.50 from the agricultural worker's minimum wage payable under article 13 of this Order for that week.

(2) Subject to paragraphs (3) and (4), where in any week an employer provides an agricultural worker with other accommodation, the employer may deduct the sum of £4.82 from the agricultural worker's minimum wage payable under article 13 of this Order for each day in the week that the other accommodation is provided to the worker.

(3) The deduction in paragraph (2) may only be made when the agricultural worker has worked for a minimum of 15 hours in that week.

(4) Any time during that week when the agricultural worker is on annual leave or bereavement leave must count towards those 15 hours.

Payments which do not form part of an agricultural worker's remuneration

17. The following allowances and payments do not form part of an agricultural worker's remuneration—

- (a) a dog allowance of £7.63 per dog to be paid weekly where an agricultural worker is required by their employer to keep one or more dogs;
- (b) on-call allowance of a sum which is equivalent to two times the hourly overtime rate set out in article 14 of this Order for each hour that the agricultural worker is on call;
- (c) a night work allowance of £1.44 for each hour of night work; and
- (d) a birth and adoption grant of £60 for each child.

Training costs

18.—(1) Where an agricultural worker attends a training course with the prior agreement of their employer, the employer must pay—

- (a) any fees for the course; and
- (b) any travelling and accommodation expenses incurred by the agricultural worker attending the course.

(2) An agricultural worker who has been continuously employed at Grade 1 by the same employer for not less than 30 weeks 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.

(3) Any training undertaken by an agricultural worker in accordance with paragraph (2), is to be paid for by the employer.

PART 4 – Entitlement to agricultural sick pay

Entitlement to agricultural sick pay

19. Subject to the provisions in this Part, an agricultural worker is entitled to receive agricultural sick pay from their employer in respect of their sickness absence.

Qualifying conditions for agricultural sick pay

20. An agricultural worker qualifies for agricultural sick pay under this Order provided that the agricultural worker has—

- (a) been continuously employed by their employer for a period of at least 52 weeks prior to the sickness absence;
- (b) notified their employer of the sickness absence in a way previously agreed with their employer or, in the absence of any such agreement, by any reasonable means;
- (c) in circumstances where the sickness absence has continued for a period of 8 or more consecutive days, provided their employer with a certificate from a registered medical practitioner which discloses the diagnosis of the worker’s medical disorder and states that the disorder has caused the agricultural worker’s sickness absence.

Periods of sickness absence

21. 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 absence.

Limitations on entitlement to agricultural sick pay

22.—(1) Agricultural sick pay will not be payable for the first 3 days sickness absence in circumstances where the duration of the sickness absence is less than 14 days.

(2) During each period of entitlement, the maximum number of weeks that an agricultural worker is entitled to agricultural sick pay is—

- (a) 13 weeks where the agricultural worker has been employed by the same employer for at least 12 months but not more than 24 months;
- (b) 16 weeks where the agricultural worker has been employed by the same employer for at least 24 months but not more than 36 months;
- (c) 19 weeks where the agricultural worker has been employed by the same employer for at least 36 months but not more than 48 months;
- (d) 22 weeks where the agricultural worker has been employed by the same employer for at least 48 months but not more than 59 months;
- (e) 26 weeks where the agricultural worker has been employed by the same employer for 59 months or more.

(3) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a fixed number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to the agricultural worker by the number of qualifying days worked each week.

(4) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a varying number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to that worker by the number of relevant days.

(5) The number of relevant days is calculated by dividing the number of qualifying days worked during a period of 12 months leading up to the period of sickness absence by 52.

(6) An agricultural worker's maximum entitlement to agricultural sick pay applies regardless of the number of occasions of sickness absence during any period of entitlement.

(7) Subject to paragraph (8), in this article, "a period of entitlement" is a period beginning with the commencement of a sickness absence and ending 12 months later.

(8) If the agricultural worker has a period of sickness absence which commences at any time during the period of entitlement described in paragraph (7), but which continues beyond the end of that period of entitlement, the period of entitlement must be extended so as to end on whichever of the following first occurs—

- (a) the date when the agricultural worker's sickness absence ends and the agricultural worker returns to work; or
- (b) the day on which the agricultural worker reaches the maximum entitlement to agricultural sick pay applicable to the 12 month period referred to in paragraph (6) (had it not been extended).

Determining the amount of agricultural sick pay

23.—(1) Agricultural sick pay is payable at a rate which is equivalent to the minimum hourly rate of pay prescribed in article 13 and Schedule 4 of this Order as applicable to that grade or category of agricultural worker.

(2) The amount of agricultural sick pay payable to an agricultural worker is determined by calculating the number of daily contractual hours that would have been worked during a period of sickness absence.

(3) The number of daily contractual hours are determined—

- (a) in circumstances where an agricultural worker works a fixed number of hours each week by dividing the total number of hours worked during any week by the number of days worked in that week;
- (b) in circumstances where an agricultural worker works a varying number of hours each week, by applying the formula

$$\frac{QH \div 8}{DWEH}$$

where —

QH is the total number of qualifying hours in the period, and

DWEH is the number of days worked each week by the agricultural worker when taken as an average during a period of 8 weeks immediately preceding the commencement of the sickness absence.

(4) In this article "qualifying hours" are hours where—

- (a) the agricultural worker worked basic hours or guaranteed overtime;

- (b) the agricultural worker took annual leave or bereavement leave;
 - (c) the agricultural worker had sickness absence qualifying for agricultural sick pay under this order; or
 - (d) the agricultural worker had sickness absence not qualifying for agricultural sick pay under this order; and
- ‘qualifying days’ are any days within the period on which there were qualifying hours relating to the agricultural worker.

(5) For the purposes of calculations under this article, where an agricultural worker has been employed by their employer for less than eight weeks, account must be taken of qualifying hours and qualifying days in the actual number of weeks of the agricultural worker’s employment with their employer.

Agricultural sick pay to take account of statutory sick pay

24. An amount equal to any payment of statutory sick pay made in accordance with Part XI of the Social Security Contributions and Benefits Act 1992(9) in respect of a period of an agricultural worker’s sickness absence may be deducted from that worker’s agricultural sick pay.

Payment of agricultural sick pay

25. Agricultural sick pay must be paid to the agricultural worker on their normal pay day in accordance with either their contract of service or their apprenticeship.

Employment ending during sickness absence

26.—(1) Subject to paragraph (2), if during a period of sickness absence, either an agricultural worker’s contract of service or their apprenticeship is terminated or the agricultural worker is given notice that either their contract of service or their apprenticeship is to be terminated, any entitlement which the agricultural worker has to agricultural sick pay continues after that contract ends as if the agricultural worker was still employed by their employer, until one of the following occurs—

- (a) the agricultural worker’s sickness absence ends;
- (b) the agricultural worker starts work for another employer; or
- (c) the maximum entitlement to agricultural sick pay in accordance with article 23 is exhausted.

(2) An agricultural worker whose contract has been terminated is not entitled to any agricultural sick pay after the end of their employment in accordance with paragraph (1) if the agricultural worker was given notice that their employer intended to terminate their contract of service or their apprenticeship before the period of sickness absence commenced.

Overpayments of agricultural sick pay

27.—(1) Subject to the provisions of paragraph (2), if an agricultural worker who is entitled to agricultural sick pay under this Part is paid more agricultural sick pay than their entitlement, their employer can recover the overpayment of such agricultural sick pay by deduction from that agricultural worker’s wages.

(2) If an overpayment of agricultural sick pay under this Order is deducted as mentioned in paragraph (1), the employer must not deduct more than 20% of the agricultural worker’s gross wage unless notice has been given to terminate the employment or the employment has already been

(9) 1992 (c.4).

terminated in which case more than 20% of the agricultural worker's gross wage may be deducted by the employer from payment of the worker's final wages.

Damages recovered for loss of earnings

28.—(1) This article applies to an agricultural worker whose entitlement to agricultural sick pay arises because of the actions or omissions of a person other than their employer and damages are recovered by the worker in respect of loss of earnings suffered during the period in respect of which the agricultural worker received agricultural sick pay from their employer.

(2) Where paragraph (1) applies—

- (a) the agricultural worker must immediately notify their employer of all the relevant circumstances and of any claim and of any damages recovered under any compromise, settlement or judgment;
- (b) all agricultural sick pay paid by the employer to that agricultural worker in respect of the sickness absence for which damages for loss of earnings are recovered must constitute a loan to the worker; and
- (c) the agricultural worker must refund to their employer a sum not exceeding the lesser of—
 - (i) the amount of damages recovered for loss of earnings in the period for which agricultural sick pay was paid; and
 - (ii) the sums advanced to the agricultural worker from their employer under this Part by way of agricultural sick pay.

PART 5

Entitlement to time off

Rest breaks

29.—(1) An agricultural worker who is aged 18 or over and who has a daily working time of more than 5 and a half hours is entitled to a rest break.

(2) The rest break provided for in paragraph (1) is an uninterrupted period of not less than 30 minutes and the agricultural worker is entitled to spend it away from their workstation (if they have one) or other place of work.

(3) Subject to paragraph (4), the provisions relating to rest breaks as specified in paragraphs (1) and (2) do not apply to an agricultural worker where—

- (a) due to the specific characteristics of the activity in which the agricultural worker is engaged, the duration of their working time is not measured or predetermined;
- (b) the agricultural worker's activities involve the need for continuity of service or production;
- (c) there is a foreseeable surge of activity;
- (d) the agricultural worker's activities are affected by—
 - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of their employer;
 - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or
 - (iii) an accident or the imminent risk of an accident; or

- (e) the employer and agricultural worker agree to modify or exclude the application of paragraphs (1) and (2) in the manner and to the extent permitted by or under the Working Time Regulations 1998⁽¹⁰⁾.
- (4) Where paragraph (3) applies and an agricultural worker is accordingly required by their employer to work during a period which would otherwise be a rest break—
 - (a) the employer must, unless sub-paragraph (b) applies, allow the agricultural worker to take an equivalent period of compensatory rest; and
 - (b) in exceptional cases in 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.

Annual leave year

30. The annual leave year for all agricultural workers is the period of 12 months beginning on 1 October and ending on 30 September.

Amount of annual leave for agricultural workers employed throughout the annual leave year

31.—(1) An agricultural worker who is employed by the same employer throughout the annual leave year is entitled to the amount of annual leave prescribed in the Table in Schedule 5.

(2) Where an agricultural worker works their basic hours and, where applicable any guaranteed overtime, on a fixed number of qualifying days each week, the number of days worked each week for the purposes of the Table in Schedule 5 is that fixed number of days.

(3) Where an agricultural worker works their basic hours and, where applicable any guaranteed overtime, on a varying number of days each week, the number of days worked each week for the purposes of the Table in Schedule 5, is to be taken as an average of the number of qualifying days worked each week during the period commencing on the start date of the annual leave year and ending the day before the commencement of the agricultural worker's annual leave.

Amount of annual leave for agricultural workers employed for part of the leave year

32.—(1) An agricultural worker employed by the same employer for part of the annual leave year is entitled to accrue annual leave at a rate of $1/52^{\text{nd}}$ of the annual leave entitlement specified in the table in Schedule 5 for each completed week of service with the same employer.

(2) Where the amount of annual leave accrued in a particular case includes a fraction of a day other than a half day, that fraction is to be—

- (a) rounded down to the next whole day if it is less than half a day; and
- (b) rounded up to the next whole day if it is more than half a day.

Timing of annual leave

33.—(1) An agricultural worker may take annual leave to which they are entitled under this Order at any time within the annual leave year subject to the approval of their employer.

(2) An agricultural worker is not entitled to carry forward from one leave year to the next leave year any untaken annual leave entitlement without the approval of their employer.

⁽¹⁰⁾ S.I. 1998/1833.

(3) Where an employer has agreed that an agricultural worker may carry forward any unused annual leave entitlement, the balance carried forward may only be taken in the leave year to which it is carried forward.

(4) During the period from 1 October to 31 March in any annual leave year an employer may require an agricultural worker to take up to 2 weeks of their annual leave entitlement under this Order and may direct that the worker takes one of those two weeks of annual leave on days in the same week.

(5) During the period from 1 April to 30 September in any annual leave year an employer must permit an agricultural worker to take two weeks of the worker's annual leave entitlement under this Order in consecutive weeks.

(6) For the purpose of this article, 1 week of an agricultural worker's annual leave is equivalent to the number of days worked each week by the agricultural worker as determined in accordance with article 31.

Holiday pay

34.—(1) An agricultural worker is entitled to be remunerated in respect of each day of annual leave taken by them.

(2) The amount of holiday pay to which an agricultural worker is entitled under paragraph (1) is to be determined by dividing the agricultural worker's weekly wage as determined in accordance with paragraph (3), or as the case may be paragraph (4), by the number of qualifying days worked each week by that agricultural worker.

(3) Where the agricultural worker's gross pay each week (excluding any pay attributable to overtime) does not vary, the amount of the agricultural worker's weekly wage for the purposes of paragraph (2) is the amount which is payable by the employer under either the agricultural worker's contract of service or their apprenticeship.

(4) Where the agricultural worker's gross pay (excluding any pay attributable to overtime) varies from week to week, the amount of the agricultural worker's weekly wage for the purposes of paragraph (2) is, subject to paragraph (5), the agricultural worker's average weekly wage in a period of 12 weeks calculated by—

(a) adding together the amount of the agricultural worker's gross pay (excluding any pay attributable to overtime) in each of the 12 weeks immediately preceding the commencement of the worker's annual leave; and

(b) dividing by 12, the total gross pay ascertained under sub-paragraph (a).

(5) Where an agricultural worker has been employed by their employer for less than 12 weeks, account must be taken only of weeks in which pay was due to the agricultural worker.

(6) For the purposes of the calculation in paragraph (2), the number of days worked is determined in accordance with the provisions in article 31 of this Order.

(7) Any pay due to an agricultural worker under this article must be made no later than the agricultural worker's last working day before the commencement of the period of annual leave to which the payment relates.

Public holidays and bank holidays

35.—(1) This article applies where a public holiday or bank holiday in Wales falls on a day when an agricultural worker is normally required to work either under their contract of service or their apprenticeship.

(2) An agricultural worker required by their employer to work on the public holiday or bank holiday is entitled to be paid not less than the overtime rate specified in article 14.

(3) An agricultural worker who is not required by their employer to work on the public holiday or bank holiday is to have the balance of their accrued annual leave for that leave year under this Order reduced by 1 day in respect of the public holiday or bank holiday on which the agricultural worker is not required to work.

Payment in lieu of annual leave

36.—(1) Subject to the conditions in paragraph (2), an agricultural worker and their employer may agree that the agricultural worker is to receive payment in lieu of a day of the agricultural worker's annual leave entitlement.

(2) The conditions referred to in paragraph (1) are—

- (a) the maximum number of days for which an agricultural worker can receive a payment in lieu of annual leave during any annual leave year is prescribed in the Table in Schedule 6;
- (b) a written record is to be kept by the employer of any agreement that an agricultural worker will receive payment in lieu of a day's annual leave for a minimum of 3 years commencing at the end of that annual leave year;
- (c) in circumstances where the agricultural worker does not work on a day as agreed in accordance with paragraph (1), that day is to remain part of the agricultural worker's annual leave entitlement;
- (d) payment in lieu of annual leave is to be paid at a rate which comprises both the overtime rate specified in article 14 and holiday pay calculated in accordance with article 34 as if the day for which a payment in lieu of annual leave is made is a day on which the agricultural worker is taking annual leave.

Payment of holiday pay on termination of employment

37.—(1) Where an agricultural worker's employment is terminated and the agricultural worker has not taken all of the annual leave entitlement which has accrued to them at the date of termination, the agricultural worker is entitled in accordance with paragraph (2) to be paid in lieu of that accrued but untaken annual leave.

(2) The amount of payment to be made to the agricultural worker in lieu of each day of their accrued but untaken holiday as at the date of termination is to be calculated in accordance with article 31 as if the date of termination was the first day of a period of the agricultural worker's annual leave.

Recovery of holiday pay

38.—(1) If an agricultural worker's employment terminates before the end of the annual leave year and the agricultural worker has taken more annual leave than they were entitled to under the provisions of this Order or otherwise, their employer is entitled to recover the amount of holiday pay which has been paid to the agricultural worker in respect of annual leave taken in excess of their entitlement.

(2) Where under paragraph (1) an employer is entitled to recover holiday pay from an agricultural worker, the employer may do so by means of a deduction from the final payment of wages to the agricultural worker.

Bereavement leave

39.—(1) An agricultural worker is entitled to paid bereavement leave in circumstances where the bereavement relates to a person in Category A or Category B.

(2) For the purposes of paragraph (1), persons in Category A are—

- (a) a parent of the agricultural worker;
 - (b) a son or daughter of the agricultural worker;
 - (c) the agricultural worker’s spouse or civil partner; or
 - (d) someone 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.
- (3) For the purposes of paragraph (1), persons in Category B are—
- (a) a brother or sister of the agricultural worker;
 - (b) a grandparent of the agricultural worker; or
 - (c) a grandchild of the agricultural worker.
- (4) Bereavement leave for the purposes of paragraph (1) is in addition to any other leave entitlements under this Order.

Determining the amount of bereavement leave

40.—(1) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person within Category A is—

- (a) 4 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer; or
- (b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (2).

(2) Subject to paragraph (6), the amount of an agricultural worker’s entitlement to bereavement leave following the death of a person within Category A is to be calculated according to the following formula—

$$\frac{DWEW}{5} \times 4$$

(3) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person in Category B is—

- (a) 2 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer; or
- (b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (4).

(4) Subject to paragraph (6), where this article applies the amount of an agricultural worker’s entitlement to bereavement leave following the death of a person within Category B is to be calculated according to the following formula—

$$\frac{DWEW}{5} \times 2$$

(5) For the purposes of the formula in paragraphs (2) and (4), DWEW is the number of days worked each week by the agricultural worker calculated in accordance with article 31.

(6) Where the calculation in either paragraph (2) or (4) results in an entitlement to bereavement leave of less than 1 day, the entitlement is to be rounded up to one whole day.

(7) In circumstances where an agricultural worker has more than one employment (whether with the same employer or with different employers), paid bereavement leave may be taken in respect of more than one employment but must not exceed, in respect of any one occasion of bereavement, the maximum amount of bereavement leave specified for a single employment in this article.

Amount of pay for bereavement leave

41. The amount of pay in respect of bereavement leave is to be determined in accordance with the provisions in article 34 as if the first day of the agricultural worker's bereavement leave was the first day of that worker's annual leave.

Unpaid leave

42. An agricultural worker may, with their employer's consent, take a period of unpaid leave.

PART 6

Transitional and saving provisions

Transitional and saving provisions

43.—(1) Subject to paragraph (2), an agricultural worker employed as a worker at a Grade or category and subject to the terms and conditions prescribed in the 2012 Order⁽¹¹⁾ or any previous Order continue to be employed in that Grade or category and are, from the date this Order, comes into force, subject to the terms and conditions prescribed in this Order.

(2) Subject to section 12(3) of the Agricultural Sector (Wales) Act 2014⁽¹²⁾, the provisions of the 2012 Order and any previous Order are to be treated as continuing in force for the purposes of continuing the validity of anything done (or having effect as if done) under any such Order and for the purposes of enforcing any rights or liabilities accrued or incurred under any such Order.

(3) In this article—

“the 2012 Order” (“*Gorchymyn 2012*”) means the Agricultural Wages (England and Wales) Order 2012; and

“previous Order” (“*Gorchymyn blaenorol*”) means an order revoked by article 70 in the 2012 Order.

Rebecca Evans
Deputy Minister for Farming and Food, under
the authority of the Minister for Natural
Resources, one of the Welsh Ministers

3 February 2016

⁽¹¹⁾ Section 12(1) of the Agricultural Sector (Wales) Act 2014 provides that, notwithstanding the provision in section 72(4) and paragraph 2 of Schedule 20 to the Enterprise and Regulatory Reform Act 2013 (c. 24) and article 4 of S.I. 2013/1455, the provisions of the Agricultural Wages (England and Wales) Order 2012 have effect in relation to agricultural workers on and from 1 October 2013 until such time as the Welsh Ministers make a new Order.

⁽¹²⁾ 2014 (anaw 6).