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## Member Brief No 155

### Agricultural Wages Orders

### Northern Ireland, Scotland and Wales

#### Introduction

This Brief brings together a number of matters relevant to labour providers that supply agricultural workers in Northern Ireland, Scotland and Wales. Separate arrangements for agricultural workers in England were abolished in October 2013 and national laws apply.

Agricultural Wages Orders are complicated. Labour providers supplying workers subject to them should study the latest relevant Order. The Gangmasters Licensing Authority (GLA) has confirmed that it “expects licence holders to pay the relevant agricultural rates in order to comply with the critical Licensing Standard 2.2. The authority adopts a proportionate approach when deciding if Standard 2.2 should be breached or not.”

Scottish Rural Affairs Secretary Richard Lochhead announced on 22<sup>nd</sup> December 2015 that the Scottish Agricultural Wages Board is to be retained saying “The evidence in favour of retaining the Scottish Agriculture Wages Board is compelling. It continues to perform an important role in protecting the rights of farm workers - many of whom are paid low wages – which in turn underpins the rural economy.”

Rebecca Evans, Deputy Minister for Farming and Food confirmed on 11<sup>th</sup> November 2015 that the Welsh Government will be introducing an Interim Agricultural Wages Order for Wales saying that this “underpins the Welsh Government’s vision of a modern, professional and profitable agriculture industry in Wales, and the importance of having well-motivated, well-trained and appropriately remunerated workers.”

Arrangements for agricultural workers vary as follows:

- Northern Ireland Agricultural Wages - <https://www.dardni.gov.uk/articles/current-terms-and-conditions-employments-wages-etc>. Northern Irish agricultural wages queries should be addressed to [FarmPolicyBranch@dardni.gov.uk](mailto:FarmPolicyBranch@dardni.gov.uk) or [David.Millar@dardni.gov.uk](mailto:David.Millar@dardni.gov.uk) or call 02890 524 477.
- Scotland - Agricultural Wages Order - <http://www.gov.scot/Publications/2016/10/7994/downloads>. Scottish agricultural wages queries should be addressed to [sawb@scotland.gsi.gov.uk](mailto:sawb@scotland.gsi.gov.uk) or 0300 244 9749.
- Wales – <http://gov.wales/topics/environmentcountryside/farmingandcountryside/agricultural-sector-wales-act-2014/interim-order/?lang=en>. The Agricultural Wages (Wales) Order 2016 came into force on 26 February 2016 as an interim measure until a new agricultural wages order is made based on the recommendations of the Agricultural Advisory Panel. Agricultural wages queries in Wales should be addressed to the Welsh Government at [SLMenquiries@wales.gsi.gov.uk](mailto:SLMenquiries@wales.gsi.gov.uk).

## **Scope of the Agricultural Wages Order**

The Agricultural Wages Orders apply to workers who are “employed in agriculture”. Employment means “employment under a contract of service or apprenticeship.”

Workers engaged by labour providers on contracts for services are not employees as defined under section 230(1) (a) the Employment Rights Act 1996 but are instead workers as defined under 230(3) (b) of this act.

Workers on contracts for services are therefore not covered by the Agricultural Wages Orders and as such there is a requirement only to provide them with terms in accordance with national laws.

Labour providers should be mindful however that:

- Workers supplied by labour providers who are on contracts of employment are covered by the Orders.
- Labour users may require workers supplied to be given terms in accordance with the relevant Order.
- The provisions of the Agency Worker Regulations 2010 apply equally to agricultural workers as to any other sector.
- Where workers supplied are treated more like employees on a contract of employment than a worker on a contract for services then the GLA may determine that an employment relationship has been formed and therefore the terms of the relevant Agricultural Wages Order apply.

The process that the GLA follows to determine employment status is outlined in [GLA Brief 18 – How the GLA tests Employment Status](#). During an inspection, the GLA will review the terms of engagement between the licence holder and the worker and consider whether the contractual documentation reflects the reality of the relationship between the parties. GLA inspectors will interview workers, the licence holder and labour users to determine whether the individuals supplied by the labour provider should be considered as “employees”, “workers” or “self-employed”. The GLA Licensing Team will review the evidence gathered to determine whether there has been compliance with the Licensing Standards as part of making a licence decision.

## **Cross Border Working - Which Agricultural Order Applies**

The policy of the Agriculture and Rural Affairs Division of the Welsh Government regarding the appropriate terms to apply are:

1. A business based in England but whose workers may work in Wales on a limited ad hoc basis – National Minimum Wage (NMW) conditions will apply
2. A business based in Wales but whose workers may work in England on a limited ad hoc basis – the rates applicable to Agricultural Wages in Wales apply.

This is general advice based on the understanding that workers normally work in the country in which they are based. Labour providers wishing to apply this should seek confirmation of arrangements from [SLMenquiries@wales.gsi.gov.uk](mailto:SLMenquiries@wales.gsi.gov.uk) in order to provide evidence to the GLA that higher rates of pay are not being deliberately avoided.

The policy of the Rural Business Development department of the Scottish Government and the Department of Rural Development in Northern Ireland is that, while cross-border working will be considered on a case by case basis, it is where the worker is actually working at any given time that determines the appropriate minimum wage regime and not where the employer is based.

The Welsh Government has confirmed that they will have no difficulty where this interpretation is applied.

### **Definition of Agriculture Work**

Agricultural work is broadly defined as including -

- Crop/livestock production
- Site preparation, planting and crop maintenance
- Harvesting
- Horticultural production (including work in market gardens or nursery grounds)
- Forestry
- Processing and packing of produce on the farm or enterprise where it is grown
- Work on a farm that is ancillary to the production process

Defra has previously advised the following as to whether packhouse workers are to be regarded as working in agriculture:

- The packaging and processing of produce is deemed to be agricultural work if the produce has been grown on the farm (or enterprise, which could consist of more than one farm or unit in the same ownership or group) where the packing takes place and it is considered to be "first stage packaging" (in other words the last stage in the production process, before the produce is sold on).
- Where the produce to be packaged / processed is bought in, either from farms in different ownership or imported, workers employed in any aspect of packing, processing or handling are not covered by the provisions of the Order.
- On the processing side, it depends on whether the nature of the produce is substantially changed as to whether workers are covered by the Order. For example, turning potatoes into chips would be outside the scope of the Order, irrespective of whether the potatoes are bought in or home grown. Workers engaged in simple processing (for example, topping and tailing, to render vegetables into saleable condition) would be covered by the Order if they were dealing with produce which that had not been bought in.
- If the packaging is a very technical process or the goods have been extensively processed before the packing operation, workers could be considered to be employed in a separate industry from the farm.
- With regard to workers handling produce after it has been packed, these would be covered by the Order if the produce has not passed its first point of sale.
- It is possible for workers to be engaged in work which is split between that within the remit of the Order and that which falls outside.

Where workers undertake a mixture of agricultural and non-agricultural work the Agricultural Wages Order applies to every hour of agricultural work.

## **Piece rates for Agricultural Workers**

Piece rates must be paid as a minimum at the appropriate agricultural minimum wage (at standard or overtime rates as relevant) over the whole pay reference period i.e. a week if paid weekly and not for each individual hour worked.

The general interaction between agricultural and national rates is that the National Minimum and Living rates will apply over and above the AWB rates if they are/become higher at any time. Piece rates paid should always meet at least whichever national rate applies.

## **Overtime for Agricultural Workers**

In all Agricultural Wages Orders it is a statutory requirement for overtime to be paid at a minimum of time and a half of the Agricultural Minimum Wage for any work in excess of 39 hours in a week (and eight hours on any one day in Scotland and Wales).

The Northern Ireland and Scottish executives have confirmed that their interpretation is that the agricultural overtime rate will be not less than 1.5 times the higher of the Agricultural Minimum Wage, the National Minimum or the National Living rates, whichever of these applies. The Welsh executive has a different interpretation and has confirmed that the agricultural overtime rate will be not less than 1.5 times the Agricultural Minimum Wage.

To provide clarity on a couple of common scenarios:

Example 1 - Workers work at agricultural and non-agricultural assignments in the same week. In this case the hours worked outside of agriculture are disregarded. Overtime rates only apply once a worker has completed the requisite number of agricultural work hours.

Example 2 - Workers are used by a labour provider at various agricultural assignments. For example: The worker works 20 hours at Farmer 1, 15 hours at Farmer 2, 18 hours at Farmer 3, a total of 53 hours. In this case the Agricultural Wages Orders oblige the labour provider to pay the workers overtime if their hours exceed 8 in any one day or 39 in a week regardless of whether this cost can be passed onto the labour user.

The GLA regard non-payment of overtime to agricultural workers to be a breach of the minimum wage licensing standard 2.2. This is a critical Licensing Standard, which means that any labour provider not paying overtime in accordance with the Agricultural Wages Order will be regarded as non-compliant and which may, taking into account proportionality, result in a licence revocation without immediate effect.

## **Further Advice**

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Please contact the ALP if you would like to discuss any of the points raised in this Brief.