

**The Operative Date of this
Order is 1st April 2021**

ORDER No. 101

AGRICULTURAL WAGES (AMENDMENT) ORDER 2021

The Agricultural Wages Board for Northern Ireland, in exercise of the powers conferred by the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (“the 1977 Order”)(a), has given notice of its proposals and has varied the minimum rates of wages for workers employed in agriculture for time-work as set out in the Schedule to this Order:

In exercise of the powers conferred by Articles 4, 8 and 10 of the 1977 Order and to carry out the decisions of the Board, the Agricultural Wages Board therefore directs that the provisions contained in the Schedule to this Order, which may be cited as the Agricultural Wages (Amendment) Order 2021, shall become effective on 1st April 2021 and that parts II, III, IV, V, and VI of the Agricultural Wages (Amendment) Order 2020(b) shall cease to have effect.

By Order of the Agricultural Wages Board for Northern Ireland.

RODGER McKNIGHT
Chair

Dundonald House
Upper Newtownards Road
Ballymiscaw
Belfast
BT4 3SB

12th March 2021

(a) 1977/2151 (N.I. 22)

(b) Order No. 100

SCHEDULE

PART II

MINIMUM RATES OF WAGES

1. For any pay reference period commencing on or after 1st April 2021, the wages payable for time-work for all Grade 1 to Grade 6 workers shall be not less than the rates set out in the table below. A “pay reference period” is a month, or in the case of a worker who is paid wages by reference to a period shorter than a month, that period.

	Rate per hour £
Grade 1 - Minimum Rate - Applicable for first 40 weeks cumulative employment	6.95
Grade 2 - Standard Worker	7.49
Grade 3 - Lead Worker	8.91
Grade 4 - Craft Grade	9.58
Grade 5 - Supervisory Grade	10.09
Grade 6 - Farm Management Grade	10.95

2. The wages payable for the employment of a whole-time worker shall be not less than the wages at the appropriate hourly rates as set out in paragraph 1.

3. Where at any time the National Minimum Wage or the National Living Wage for workers aged 23 or over becomes higher than the hourly rates set out above, then, as respects any period beginning at or after that time, the hourly or other minimum rate shall be equal to the National Minimum Wage or National Living Wage, whichever applies. In these circumstances, the National Minimum Wage or National Living Wage shall be used in relation to all pay calculations under this Order.

4. The minimum hourly rates as set out in paragraph 1 shall apply where a whole-time worker works less than 39 hours in any week by agreement with his employer, or where a whole-time worker is required by his contract of employment to work not more than 2 hours short of 39 hours per week.

5. In any week in which a worker is allowed a holiday in accordance with the provisions of paragraph 1 of Part V –

- (a) the minimum weekly wages payable to the worker calculated at the hourly rate specified in paragraph 1 shall be reduced by any holiday remuneration payable in respect of that holiday; and
- (b) the number of hours in that week to which the minimum hourly rates apply shall be reduced by one-fifth in respect of each day's holiday to which the worker is entitled to be allowed in that week.

6. The wages payable for the employment of a worker other than a whole-time worker shall be not less than wages at the appropriate hourly rates as set out in paragraph 1, provided that, in any case where such a worker is employed by the day and works in any day hours in excess of 8 hours, such worker shall be paid wages at not less than the appropriate hourly overtime rate.

7. For the purposes of all the rates specified in paragraph 1, the hours of work shall not include meal times, but shall include any time during which, by reason of weather conditions, an employer has prevented from working a worker who was present at the place of employment and ready for work.

8. The respective minimum rates of wages specified in paragraph 1 are without prejudice to workers earning higher rates of wages or to agreements made, or that may be made, between employers and workers for the payment of wages in excess of these minimum rates.

PART III

OVERTIME PROVISIONS

1. The differential rates of wages for overtime employment of workers shall be not less than the minimum hourly rates set out in paragraph 1 of Part II multiplied by 1.5.

2. For the purposes of the application of the differential rates of wages for overtime, the following employment is to be treated as overtime employment:-

(a) employment in excess of hours per week for which a minimum hourly rate as set out in paragraph 4 of Part II is payable;

(b) employment on a day on which a worker is entitled to be allowed a holiday in accordance with the provisions of paragraph 2 of Part V;

provided that in any week in which a worker is entitled to be allowed any holiday in accordance with the provisions of Part V the hours specified as being hours in excess of which all employment shall be treated as overtime employment shall be reduced by one-fifth in respect of each day's holiday to which the worker is entitled in that week.

PART IV

PAYMENTS IN KIND

1. For the purposes of the application of the minimum rates of wages set out in paragraph 1 of Part II:

(a) for all workers employed in agriculture prior to 6 April 2009 excluding 'Temporary and Harvest workers', a house or other accommodation provided by an employer, including any garden provided with it, may, with the consent of the worker, be reckoned as payment of wages in lieu of payment in cash to a maximum value of £1.50 per week;

(b) for all workers commencing work in agriculture for the first time from 6 April 2009 a house or other accommodation provided by an employer, including any garden provided with it, may, with the consent of the worker, be reckoned as payment of wages in lieu of payment in cash to a maximum value of £45.00 per week.

2. Except as provided for in paragraph 1, no deductions for benefits in kind or other advantages shall be made from a worker's pay as prescribed in paragraph 1 of Part II.

PART V

HOLIDAY ENTITLEMENT

1. From 1st April 2009:–

(a) a whole-time worker, and a part-time worker, shall proportionately, in respect of continuous employment with the same employer, be entitled in each holiday year to a minimum holiday entitlement of not less than 5.6 weeks, in keeping with the table below.

Number of days worked per week	Number of days of holiday entitlement for entire holiday year
1	6
2	11.5
3	17
4	22.5
5	28

2. During the second year of employment a whole-time worker, and a part-time worker, shall proportionately, on completion of 12 months continuous employment with the same employer, be entitled to one additional day's holiday in every holiday year:–

(a) any one of the following days:

- (i) 1st day of January;
- (ii) 17th day of March;
- (iii) Good Friday;
- (iv) Easter Monday;
- (v) May Day;
- (vi) 12th July;
- (vii) 13th July;
- (viii) first Monday of August;
- (ix) last Monday of August;
- (x) 12th August;
- (xi) 15th August;
- (xii) last Saturday in August;
- (xiii) 25th December;
- (xiv) 26th December;

- (b) if any such additional day falls on a Sunday or the weekly day-off, the next following working day may be taken in lieu; and
 - (c) where any two of such additional days are consecutive and the first falls on a Sunday or the weekly day-off, the next two following working days may be taken in lieu of those days.
3. Holiday entitlement is deemed to accrue over the course of the worker's first year of employment, at the rate of one-twelfth of the amount specified at the table in paragraph 1 on the first day of each month of that year.
 4. Where the amount of holiday entitlement that has accrued in a particular case includes a fraction of a day other than a half-day, the fraction shall be treated as a half-day if it is less than a half-day and as a whole day if it is more than a half-day.
 5. During the first year of his employment, the amount of days holiday a worker may take at any time in exercise of his entitlement under paragraph 1 is limited to the amount which is deemed to have accrued at that time less the amount of leave (if any) that he has already taken during that year.
 6. Where the date on which the worker's employment begins is later than the date on which his current holiday year begins, his holiday entitlement in that holiday year is a proportion of the period applicable under paragraph 1 equal to the proportion of the holiday year remaining on the date on which his employment begins.
 7. None of the days to be allowed as a holiday under paragraph 1 shall be a Sunday, the weekly day-off, or, the day chosen by the worker from those specified in paragraph 2 on which the worker would otherwise not be required to work.
 8. Where a worker is contractually obliged to work a different number of days on different weeks, his contractual days of work for each week for the purposes of paragraph 1 shall be the average number of days he is contractually obliged to work during each period of 12 weeks; and that average number shall, where appropriate, be rounded to the nearest whole number, a half being rounded up to the next whole number.
 9. Where the holiday entitlement to which a worker is entitled is or includes a proportion of a week the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.
 10. Where the employer and the worker are unable to agree when a holiday to which the worker is entitled by virtue of this Part is to be taken, the employer:–
 - (a) may give the worker 10 days notice of the time at which the holiday can be taken; and
 - (b) shall allow a holiday to be taken not later than the termination of the worker's employment or the end of the holiday year whichever is earlier.

11. Following the first year of employment a worker may at his option on not more than one occasion during a holiday year be allowed to take up to one half of the holidays to which the worker is entitled (calculated as if employed until the end of the holiday year) under paragraph 1 on consecutive days which shall, unless the worker otherwise agrees, be after 1st April and before 31st October in the holiday year. In the first year of employment one half of the holiday entitlement cannot be taken until it has been accrued by the worker.

12. Article 14 of the Employment Rights (Northern Ireland) Order 1996(a) shall, with necessary modifications, apply for the purpose of determining whether a worker has been continuously employed with the same employer.

13. For the purposes of this Part, periods of employment with the same employer separated by intervals not exceeding in the aggregate 5 working days in any period of 5 consecutive weeks during which the worker has not been employed by any other employer, shall be deemed to be continuous employment.

14. If a worker who has been in continuous employment with the same employer for at least 12 consecutive months is:—

- (a) absent from work because of sickness or injury for a continuous period not exceeding 26 weeks; or
- (b) absent from work for a continuous period in circumstances such that by arrangement or custom he is regarded as continuing in the employment of his employer for all or any purposes,

that period shall, notwithstanding that it does not fall under paragraph 15, count as part of the period of his employment and shall not break the continuity thereof.

15. In this paragraph references to a worker's total holiday entitlement means any such entitlement in excess of any entitlement to any holidays accruing to such a worker by virtue of the Working Time Regulations (Northern Ireland) 1998(b), as amended.

Examples setting out how to calculate Holiday Entitlement are set out in Annex 1.

(a) S.I 1996/1919 (N.I. 16)

(b) S.R. 1998 No. 386 as amended by S.R. 2007 No. 340

PART VI

HOLIDAY REMUNERATION

1. The directions in this Part shall apply in regard to holiday remuneration to be paid in respect of the period of any holiday with pay to which any agricultural worker is entitled in accordance with the provisions of Part V.
2. The hourly rate of holiday remuneration shall be not less than the hourly rate of wages set out in paragraph 1 of Part II.
3. The holiday remuneration payable under paragraph 2 shall, subject to the provisions of paragraph 4, be paid on the day immediately preceding the commencement of the holiday.
4. If a worker to whom holiday remuneration has accrued due in respect of a period of employment by an employer ceases to be employed by that employer before he has been allowed a holiday in respect of that period, such holiday remuneration shall become payable by the employer to the worker immediately on the termination of his employment.
5. The provisions of the Part shall not apply so as to prejudice the operation of any agreement or custom for the payment of holiday remuneration in excess of the holiday remuneration herein contained.

NOTES

(These notes are not part of the Order)

1. This Order sets out the minimum rates of wages payable from 1st April 2021 for time-work for all Grade 1 to Grade 6 agricultural workers.
2. The Schedule to this Order replaces Parts, II, III, IV, V and VI of the Schedule to the Agricultural Wages (Amendment) Order 2020 which will cease to have effect from 1st April 2021.
3. This Order sets the payments in kind for all workers commencing in agriculture from 1st April 2021.
4. The rates and directions set out in this Order shall continue in operation until they are varied or cancelled by the Board or until they no longer equate to the National Minimum Wage or National Living Wage rates as indicated in paragraph 3 of Part II.
5. If the National Minimum Wage or National Living Wage rates become higher than any of the rates quoted in paragraph 1 of Part II, the hourly rate will become at least equal to the National Minimum Wage or National Living Wage rates.
6. Complaints about non-compliance of any aspect of this Order should be addressed to:

The Secretary
Agricultural Wages Board for Northern Ireland
1st Floor
Ballykelly House
Linavady
BT49 9HO

Calculating Holiday Entitlement

The 2021 Holiday Year

The 5.6 week rate applies throughout the year.

Example: If a worker normally works for 3 days a week, he would have to use 3 days of his holiday entitlement in order to take a week's holiday. His annual entitlement could be said to be $(5.6 \times 3 = 16.8 \text{ days})$ 17 days.

Accrual is at the rate of one-twelfth of the annual entitlement at the beginning of each month.

Example: A worker who is in his fifth month of employment and works a 5 day week would have built up 12 days holiday (the annual entitlement of 28 days multiplied by $5/12$ equals 11.7 days).

The Working Time Regulations (WTR) make it clear that a worker is entitled to a minimum of 5.6 weeks holiday in a holiday year. There is no provision for payment in lieu of any part of these 5.6 weeks if they are untaken by the end of the holiday year. Payment in lieu will however still apply to those holidays which are over and above the provisions set by the WTR.

Example: A worker, who normally works 5 days per week, leaves their place of employment on 1st October 2021. As the worker has worked for three-quarters of the year, they would have been entitled to three-quarters of their holiday entitlement of 28 days, which equals 21 days. The worker has used only 10 of these days, and has also had all the Bank and Public holidays he has been due. The worker would be entitled to receive payment in lieu for all 11 days.