



# Agricultural Sector (Wales) Act 2014

2014 anaw 6

## *Enforcement*

### **5 Enforcement of minimum rates**

- (1) The enforcement provisions of the 1998 Act listed in subsection (2) are to have effect for the purposes of this Act as they have effect for the purposes of that Act (except so far as they relate to Northern Ireland or Scotland), but with the modifications specified in subsections (3) to (7) of this section.
- (2) The enforcement provisions are—
  - (a) sections 10 and 11 (records);
  - (b) section 14 (powers of officers);
  - (c) section 17 (entitlement of worker to additional remuneration), except for subsection (3);
  - (d) section 19 (notices of underpayment: arrears);
  - (e) section 19C (notices of underpayment: appeals), except for subsections (1)(c) and (6) and, so far as relating to appeals under subsection (1)(c), subsection (8);
  - (f) section 19D (non-compliance with notice of underpayment: recovery of arrears);
  - (g) section 19F (withdrawal of notice of underpayment), except for subsections (2)(a) and (4);
  - (h) section 19G (replacement notice of underpayment);
  - (i) section 19H (effect of replacement notice of underpayment), except for subsections (4) and (5);
  - (j) sections 23 and 24 (right not to suffer detriment);
  - (k) section 28 (evidence: reversal of burden of proof in civil proceedings);
  - (l) sections 31 and 33 (offences);
  - (m) section 48 (superior employers);
  - (n) section 49 (restriction on contracting out).
- (3) In the application of any of those enforcement provisions—

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*Status: Point in time view as at 30/07/2014.*

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- (a) any reference to the 1998 Act, other than a reference to a specific provision of it, includes a reference to this Act;
  - (b) any reference to a worker (within the meaning of the 1998 Act) is to be construed as a reference to an agricultural worker (within the meaning of this Act);
  - (c) any reference to a person (however described) who qualifies for the national minimum wage is to be construed as a reference to an agricultural worker;
  - (d) any reference to a record includes a reference to any record which the employer of an agricultural worker is required to keep and preserve in accordance with regulations made under section 7 of this Act;
  - (e) any reference to an officer acting for the purposes of the 1998 Act is to be construed as a reference to an officer acting for the purposes of this Act;
  - (f) subject to paragraph (c), any reference to the national minimum wage, other than a reference to the hourly amount of the national minimum wage, is to be construed as a reference to the minimum rate applicable by virtue of this Act;
  - (g) subject to paragraph (c), any reference to qualifying for the national minimum wage is to be construed as being entitled to the minimum rate applicable by virtue of this Act.
- (4) In the application of sections 10(10), 14(1)(a) and 31 of the 1998 Act, the references to a record required to be kept in accordance with regulations made under section 9 of the 1998 Act includes references to a record required to be kept in accordance with regulations made under section 7 of this Act.
- (5) In the application of section 14 of the 1998 Act, after subsection (2) insert—
- “(2A) Where an officer wishes to exercise the power under paragraph (d) of subsection (1) in relation to a dwelling house, the officer must first give reasonable notice.”
- (6) In the application of section 17 of the 1998 Act—
- (a) for subsection (2) substitute—
    - “(2) The amount referred to in subsection (1)(a) is the difference between—
      - (a) the remuneration received by the worker as an agricultural worker for the pay reference period from the worker's employer, and
      - (b) the amount which the worker would have received as an agricultural worker for that period had the worker been remunerated by the employer at the minimum rate applicable by virtue of the Agricultural Sector (Wales) Act 2014;”
  - (b) for subsection (4) substitute—
    - “(4) the amount referred to in subsection (1)(b) is the amount determined by the formula—

$$(A / R1) \times R2$$

where—

A is the amount described in subsection (2),

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R1 is the minimum rate applicable by virtue of the Agricultural Sector (Wales) Act 2014 in respect of the worker during the pay reference period, and

R2 is the minimum rate which would have been applicable by virtue of that Act in respect of the worker during the pay reference period had the minimum rate applicable by virtue of that Act in respect of the worker during that period been determined by reference to any order under section 3 of that Act in force at the time of determination.”

- (7) In the application of section 33(1A) of the 1998 Act (authorisation for conducting proceedings) for “Secretary of State” substitute “ Welsh Ministers ”.
- (8) In section 104A of the Employment Rights Act 1996 (unfair dismissal: national minimum wage), in subsection (1)(c)—
  - (a) any reference to a person qualifying for the national minimum wage includes a reference to a person being or becoming entitled to a minimum rate applicable by virtue of this Act, and
  - (b) any reference to a person qualifying for a particular rate of national minimum wage includes a reference to a person being or becoming entitled to a particular minimum rate applicable by virtue of this Act.

## **6 Enforcement of holiday entitlement**

- (1) It is an offence for an employer of an agricultural worker to fail to allow the worker to take the holidays specified in an agricultural wages order.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In any proceedings against a person under this section it is for the person to prove that the agricultural worker was allowed to take the holidays to which the worker was entitled.

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