



# Agricultural Wages (Scotland) Act 1949

1949 CHAPTER 30 12 13 and 14 Geo 6

## *Wages and Holidays*

### [<sup>F1</sup>3 **Power of Scottish Agricultural Wages Board to fix rates of wages and holidays.** **S**

- (1) Subject to and in accordance with the provisions of this section, the Board shall have power to make an order in accordance with the provisions of Schedule 3 to this Act—
  - (a) fixing minimum rates of wages;
  - (b) directing holidays to be allowed;
  - (c) fixing any other terms and conditions of employment for workers employed in agriculture.
- (2) The power of the Board to make an order under subsection (1)(a) of this section fixing minimum rates of wages is a power to make an order—
  - (a) fixing minimum rates for time work;
  - (b) fixing minimum rates for piece work;
  - (c) fixing minimum rates for time work, to apply in the case of workers employed on piece work, for the purpose of securing to such workers a minimum rate of remuneration on a time work basis; or
  - (d) fixing separate minimum rates by way of pay in respect of holidays:

Provided that the minimum time rate for piece work shall not in any case be higher than the minimum rate which, if the work were time work, would be applicable thereto by virtue of paragraph (a) of this subsection.

- (2A) It shall be the duty of the Board to make an order under this section fixing such minimum rates of wages for time work as are referred to in paragraph (a) of the last preceding subsection.

[ No minimum rate fixed under this section which is an hourly rate shall be less than <sup>F2</sup>(2B) the national minimum wage.

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- (2C) No minimum rate fixed under this section which is a rate other than an hourly rate shall be such as to yield a less amount of wages for each hour worked than the hourly amount of the national minimum wage.]
- (3) An order under paragraph (b) of subsection (1) of this section directing that a worker shall be allowed a holiday—
- (a) shall not be made unless both minimum rates of wages in respect of the period of the holiday and minimum rates of wages otherwise than in respect of the holiday have been or are being fixed under this section for that worker;
  - (b) shall provide for the duration of the holiday being related to the duration of the period for which the worker has been employed or engaged to be employed by the employer who is to allow the holiday; and
  - (c) subject as aforesaid, may make provisions as to the times at which or the periods within which, and the circumstances in which, the holiday shall be allowed.
- (3A) An order under this section fixing separate minimum rates of wages in respect of holidays may make provision—
- (a) with respect to the times at which, and the conditions subject to which, those wages shall accrue and shall become payable, and
  - (b) for securing that any such wages which have accrued to a worker during his employment by any employer shall, in the event of his ceasing to be employed by that employer before he becomes entitled to be allowed a holiday by him, nevertheless become payable by the employer to the worker.
- (4) Any such minimum rates of wages as are mentioned in subsection (2) of this section may be fixed so as to vary according as the employment is for a day, week, month or other period, or according to the number of working hours, or the conditions of the employment or so as to provide for a differential rate in the case of employment defined by the Board as being overtime employment, whether that employment is remunerated on a time work or a piece work basis.
- In the exercise of their powers under this subsection, the Board shall, so far as is reasonably practicable, secure a weekly half-holiday for workers.
- (5) An order under this section shall have effect as regards any terms as to remuneration from a date specified in the order, which may be a date earlier than the date of the order but not earlier than the date on which the Board agreed on those terms prior to publishing (in accordance with Schedule 3 to this Act) the original proposals to which effect is given, with or without modifications, by the order.
- (6) Any increase in wages payable by virtue of an order under this section in respect of any time before the date of the order (hereafter in this Act referred to as arrears of wages) shall be paid by the employer within a period specified in the order being—
- (a) in the case of a worker who is in the employment of the employer on that date, a period beginning with that date;
  - (b) in the case of a worker who is no longer in the employment of the employer on that date, a period beginning with that date or the date on which the employer receives from the workers or a person acting on his behalf a request in writing for those wages, whichever is the later.
- (7) Nothing in this section shall be construed as preventing the Board fixing a minimum rate of wages so as to secure that workers employed in agriculture

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receive remuneration calculated by reference to periods during the currency of their employment.]

[<sup>F3</sup>(8) If the Board makes, or purports to make, an order fixing a minimum rate under this section—

- (a) which is an hourly rate but which is lower than the national minimum wage in force when that minimum rate comes into effect, or
- (b) which is a rate other than an hourly rate but which is such as to yield a less amount of wages for each hour worked than the hourly amount of the national minimum wage in force when that minimum rate comes into effect,

the Board shall be taken to have made an order fixing in place of that minimum rate a minimum rate equal to the national minimum wage or, as the case may be, a minimum rate such as to yield an amount of wages for each hour worked equal to the hourly amount of the national minimum wage.

(9) If, at any time after a minimum rate which is an hourly rate comes into effect under this section, the national minimum wage becomes higher than that minimum rate, then, as respects any period beginning at or after that time, the Board shall be taken to have made an order fixing in place of that minimum rate a minimum rate equal to the national minimum wage.

(10) If, at any time after a minimum rate other than an hourly rate comes into effect under this section, the national minimum wage is increased to such a level that that minimum rate yields a less amount of wages for each hour worked than the hourly amount of the national minimum wage, then, as respects any period beginning at or after that time, the Board shall be taken to have made an order fixing in place of that minimum rate a minimum rate such as to yield an amount of wages for each hour worked equal to the hourly amount of the national minimum wage.

(11) Subsections (8) to (10) of this section are without prejudice to the power of the Board to make further orders under this section fixing any minimum rates.

(12) Where an order under this section fixes any particular minimum rate of wages by reference to two or more component rates, of which—

- (a) one is the principal component, and
- (b) the other or others are supplemental or additional components,

(as in a case where the minimum rate for night work is fixed as the sum of the minimum rate payable in respect of work other than night work and a supplemental or additional minimum rate in respect of working at night) the national minimum wage provisions of this section apply in relation to the principal component rate and not the supplemental or additional component rates.

(13) The national minimum wage provisions of this section do not apply in relation to any minimum rate which is in the nature of an allowance payable in respect of some particular responsibility or circumstance (as in a case where a minimum rate is fixed in respect of being required to keep a dog).

(14) The national minimum wage provisions of this section do not apply in relation to any minimum rate fixed under this section—

- (a) by virtue of subsection (2)(d) of this section, or
- (b) by virtue of section 67 of the <sup>M1</sup>Agriculture Act 1967 (sick pay),

unless and to the extent that regulations under section 2 of the National Minimum Wage Act 1998 make provision which has the effect that circumstances or periods

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in respect of which the minimum rate in question is required to be paid to a worker are treated as circumstances in which, or times at which, a person is to be regarded as working.

- (15) In this section “the national minimum wage provisions of this section” means subsections (2B), (2C) and (8) to (10) of this section.]

#### Textual Amendments

- F1** S. 3 substituted by [Employment Protection Act 1975 \(c. 71\)](#), [Sch. 10 Pt. I](#)
- F2** S. 3(2B)(2C) inserted (1.4.1999) by [1998 c. 39, s. 47](#), [Sch. 2 Pt. II para. 12\(2\)](#) (with s. 36); S.I. 1999/685, art. 2, [Sch.](#) (with art. 3)
- F3** S. 3(8)-(15) added (1.4.1999) by [1998 c. 39, s. 47](#), [Sch. 2 Pt. II para. 12\(3\)](#) (with s. 36); S.I. 1999/685, art. 2, [Sch.](#) (with art. 3)

#### Marginal Citations

- M1** [1967 c. 22](#).

### [3A <sup>F4</sup>Enforcement. **S**

- (1) The enforcement provisions of the National Minimum Wage Act 1998 shall have effect for the purposes of this Act as they have effect for the purposes of that Act, but with the modifications specified in subsection (3) of this section.
- (2) In subsection (1) of this section “ the enforcement provisions of the National Minimum Wage Act 1998 ” means the following provisions of that Act—
- sections 9 to 11 (records);
  - section 14 (powers of officers);
  - sections 17 and 19 to 22 (enforcement of right to national minimum wage);
  - sections 23 and 24 (right not to suffer detriment);
  - section 28 (evidence: reversal of burden of proof in civil proceedings);
  - sections 31, 32 and 33(4) and (5) (offences);
  - section 48 (superior employees); and
  - section 49 (restriction on contracting out).
- (3) In the application of any provision of the National Minimum Wage Act 1998 by subsection (1) of this section—
- any reference to that Act, other than a reference to a specific provision of it, includes a reference to this Act;
  - any reference to a worker (within the meaning of that Act) shall be taken as a reference to a worker employed in agriculture (within the meaning of this Act);
  - any reference to a person (however described) who qualifies for the national minimum wage shall be taken as a reference to a worker employed in agriculture;
  - subject to paragraph (c) of this subsection, any reference to the national minimum wage, other than a reference to the hourly amount of the national minimum wage, shall be taken as a reference to the minimum rate applicable under this Act;

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- (e) subject to paragraph (c) of this subsection, any reference to qualifying for the national minimum wage shall be taken as a reference to being entitled to the minimum rate applicable under this Act; and

<sup>F5</sup>(f) .....

[ In the application of section 17 of the National Minimum Wage Act 1998 by <sup>F6</sup>(3A) subsection (1) of this section—

- (a) for subsection (2) there shall be substituted the following subsection—

(“ That amount is the difference between—

- (a) the remuneration received by the worker as a worker employed in agriculture for the pay reference period from his employer; and
- (b) the amount which he would have received as a worker employed in agriculture for that period had he been remunerated by the employer at the minimum rate applicable under this Act;”
- (b) subsection (3) shall be disregarded.]

(4) In section 104A of the <sup>M2</sup>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 under 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 under this Act.]

[<sup>F7</sup>(5) Notwithstanding section 2(4) of the National Minimum Wage (Enforcement Notices) Act 2003, in subsection (2)(c) above, the reference to section 19 includes a reference to subsections (2A) and (2B) of that section.]

#### Textual Amendments

- F4** S. 3A inserted (1.4.1999 with savings) by 1998 c. 39, s. 47, **Sch. 2 Pt. II para. 13** (with s. 36); S.I. 1999/685, art. 2, **Sch.** (with art. 3)
- F5** S. 3A(3)(f) omitted (1.4.1999) by S.I. 1999/750, **reg. 2(3)**
- F6** S. 3A(3A) inserted (1.4.1999) by S.I. 1999/750, **reg. 2(3)**
- F7** S. 3A(5) added (8.7.2003) by Agricultural Wages (Scotland) Act 1949 Amendment Regulations 2003 (No. 283), **regs. 1, 2**

#### Marginal Citations

- M2** 1996 c. 18.

## 4 Enforcement of holidays orders. **S**

(1) Subject to the provisions of this Act, if an employer fails—

- <sup>F8</sup>(a) .....
- <sup>F8</sup>(b) .....
- (c) to allow to any such worker the holidays fixed by the order [<sup>F9</sup> or
- <sup>F8</sup>(d) .....

he shall be liable on summary conviction in respect of each offence to a fine not exceeding twenty pounds <sup>F10</sup> . . .

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<sup>F11</sup>(2) . . . . .]

(3) In any proceedings against a person under this section it shall lie with him to prove that he <sup>F12</sup>. . . has allowed the holidays fixed by the order <sup>F12</sup>. . .

<sup>F13</sup>(4) . . . . .

#### Textual Amendments

- F8** S. 4(1)(a)(b)(d) repealed (1.4.1999) by 1998 c. 39, ss. 47, 53, **Sch. 2 Pt. II para. 14(a)(i)** (with s. 36); S.I. 1999/685, art. 2, **Sch.** (with art. 3)
- F9** Word and s. 4(1)(d) inserted by **Employment Protection Act 1975** (c. 71), **Sch. 10 Pt. II para. 1**
- F10** Words in s. 4(1) repealed (1.4.1999) by 1998 c. 39, ss. 47, 53, **Sch. 2 Pt. II para. 14(a)(ii)** (with s. 36); S.I. 1999/685, art. 2, **Sch.** (with art. 3)
- F11** S. 4(2) repealed (1.4.1999) by 1998 c. 39, ss. 47, 53, **Sch. 2 Pt. II para. 14(b)** (with s. 36); S.I. 1999/685, art. 2, **Sch.** (with art. 3)
- F12** Words in s. 4(3) repealed (1.4.1999) by 1998 c. 39, ss. 47, 53, **Sch. 2 Pt. II para. 14(c)** (with s. 36); S.I. 1999/685, art. 2, **Sch.** (with art. 3)
- F13** S. 4(4) repealed (1.4.1999) by 1998 c. 39, ss. 47, 53, **Sch. 2 Pt. II para. 14(d)** (with s. 36); S.I. 1999/685, art. 2, **Sch.** (with art. 3)

#### Modifications etc. (not altering text)

- C1** S. 4(1) amended by **Employment Protection Act 1975** (c. 71, SIF 43:1), s. 97, **Sch. 10 Pt. II para. 5** and **Criminal Procedure (Scotland) Act 1975** (c. 21, SIF 39:1), **ss. 289F** (increase of fines) and 289G (substitution of references to levels on the standard scale)

### <sup>F145</sup> **Permits to infirm and incapacitated persons.** **S**

. . . . .

#### Textual Amendments

- F14** S. 5 repealed (1.10.2004) by **Agricultural Wages (Permits to Infirm and Incapacitated Persons) (Repeals) (Scotland) Regulations 2004** (No. 384), regs. 1(1), 2

### **6 Provisions as to learners.** **S**

(1) . . . . . <sup>F15</sup>

(5) It shall not be lawful for the employer of a worker, being an apprentice or learner, who is employed in agriculture . . . <sup>F16</sup> to receive directly or indirectly from the worker, or on his behalf or on his account, a payment by way of premium unless the payment is duly made in pursuance of an agreement approved for the purposes of this subsection by the [<sup>F17</sup>Secretary of State], and the amount of a payment received in contravention of this subsection shall be recoverable by the person by whom the payment was made.

(6) If an employer acts in contravention of the last preceding subsection, he shall be liable on summary conviction in respect of each offence to a fine not exceeding twenty pounds, and in any proceedings against an employer under this subsection the court shall, whether there is a conviction or not, order the employer to repay any sum which

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the court finds to have been received by way of premium in contravention of the last preceding subsection.

(7) Nothing in the last preceding subsection shall be taken to exclude the bringing otherwise than in accordance with that subsection of proceedings for the recovery of an amount due under subsection (5) of this section.

(8) . . . . . <sup>F15</sup>

**Textual Amendments**

- F15** Ss. 1(2), 2, 6(1)–(4)(8), 8, 9(2), Sch. 2 repealed by [Agriculture \(Miscellaneous Provisions\) Act 1972 \(c. 62\)](#), **Sch. 6**
- F16** Words repealed by [Agriculture \(Miscellaneous Provisions\) Act 1972 \(c. 62\)](#), **Sch. 6**
- F17** Words substituted by [Agriculture \(Miscellaneous Provisions\) Act 1972 \(c. 62\)](#), **Sch. 5**

**Modifications etc. (not altering text)**

- C2** [S. 6\(6\)](#) amended by [Employment Protection Act 1975 \(c. 71, SIF 43:1\)](#), s. 97, **Sch. 10 Pt. II para. 5** and [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F** (increase of fines) and 289G (substitution of references to levels on the standard scale)

**7 Reckoning of benefits and advantages as payment of wages. S**

- (1) The Board shall have power, . . . <sup>F18</sup>, by order made in accordance with the provisions of the Third Schedule to this Act—
  - (a) to define the benefits or advantages (not being benefits or advantages prohibited by law) which for the purposes of a minimum rate of wages fixed under this Act may be reckoned as payment of wages in lieu of payment in cash;
  - (b) to determine the value at which, for the purposes aforesaid, such benefits or advantages may be so reckoned;
  - (c) to limit or prohibit the reckoning for the purposes aforesaid of benefits or advantages as payment of wages in lieu of payment in cash.
- (2) Subject to the provisions of any order under the preceding subsection, the court shall, in any proceedings under this Act, reckon as a payment of wages such amount as in the opinion of the court represents the value of any benefits or advantages (not being benefits or advantages prohibited by law) received by a worker under the terms of his employment.
- (3) If [<sup>F19</sup>the Secretary of State is] satisfied, on an application in that behalf made by a worker employed in agriculture . . . <sup>F18</sup> or by his employer, that the value determined by an order or direction under this section for a house or part of a house occupied as a separate dwelling by the worker does not correspond with the true value thereof, [<sup>F19</sup>the Secretary of State] may, . . . <sup>F18</sup>, direct that the value of the house or part of a house is to be reckoned for the purposes of a minimum rate of wages fixed under this Act at such different amount as may be specified in the direction.

**Textual Amendments**

- F18** Words repealed by [Agriculture \(Miscellaneous Provisions\) Act 1972 \(c. 62\)](#), **Sch. 6**
- F19** Words substituted by [Agriculture \(Miscellaneous Provisions\) Act 1972 \(c. 62\)](#), **Sch. 5**

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**Modifications etc. (not altering text)**

**C3** Power to amend s. 7 conferred (1.4.1999) by 1998 c. 39, s. 47(4)(b) (with s. 36); S.I. 1999/685, art. 2, Sch. (with art. 3)

8 ..... <sup>F20</sup> **S**

**Textual Amendments**

**F20** Ss. 1(2), 2, 6(1)–(4)(8), 8, 9(2), Sch. 2 repealed by Agriculture (Miscellaneous Provisions) Act 1972 (c. 62), Sch. 6

**9 Provisions as to applications, &c., to agricultural wages committees. **S****

(1) The procedure to be followed on or in connection with applications [<sup>F21</sup>to the Secretary of State under section 5 or section 7 of this Act] shall be such (if any) as may be prescribed.

(2) ..... <sup>F22</sup>

**Textual Amendments**

**F21** Words substituted by Agriculture (Miscellaneous Provisions) Act 1972 (c. 62), Sch. 5

**F22** Ss. 1(2), 2, 6(1)–(4)(8), 8, 9(2), Sch. 2 repealed by Agriculture (Miscellaneous Provisions) Act 1972 (c. 62), Sch. 6

**10 Criminal liability of agents and special defence open to employer. **S****

(1) Where an offence for which an employer is under section four or subsection (6) of section six of this Act liable to a fine has in fact been committed by some agent of the employer or other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer and either together with, or before or after the conviction of, the employer, and shall be liable on conviction to the same punishment as that to which the employer is liable.

(2) Where an employer who is charged with an offence under section four or subsection (6) of section six of this Act proves to the satisfaction of the court that he has used due diligence to secure compliance with the relevant provisions of this Act, and that the offence was in fact committed by his agent or some other person, without his knowledge, consent or connivance, he shall, in the event of the conviction of that agent or other person for the offence, be exempt from any conviction in respect of the offence.

**11 Avoidance of agreements in contravention of this Act and saving for other agreements, &c. **S****

(1) Any such agreement as the following shall be void, that is to say—

<sup>F23</sup>(a) .....



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- (b) an agreement as to holidays that is inconsistent with a direction of the Board in that behalf, or for abstaining from exercising the right to holidays conferred by any such direction.
  - [<sup>F24</sup>(c) any term or condition of a contract of employment that is inconsistent with a term or condition of employment fixed by an order of the Board under this Act or any agreement for abstaining from enforcing a term or condition so fixed.]
- (2) Nothing in this Act shall prejudice the operation of an agreement or custom for the payment of wages at a rate higher than the minimum rate fixed under this Act or an agreement or custom as to holidays that is not inconsistent with a direction of the Board in that behalf [<sup>F25</sup>or a term or condition of a contract of employment that is not inconsistent with a term or condition so fixed.]

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**Textual Amendments**

- F23** S. 11(1)(a) repealed (1.4.1999) by 1998 c. 39, s. 47, 53, Sch. 2 Pt. II para. 16, **Sch. 3** (with s. 36); S.I. 1999/685, art. 2, **Sch.** (with art. 3)
- F24** S. 11(1)(c) added by Employment Protection Act 1975 (c. 71), **Sch. 10 Pt. II para. 3(1)**
- F25** Words added by Employment Protection Act 1975 (c. 71), **Sch. 10 Pt. II para. 3(2)**

**Changes to legislation:**

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