

## SCHEDULES

### SCHEDULE 2

#### AMENDMENTS RELATING TO REMUNERATION ETC OF AGRICULTURAL WORKERS

##### PART II

##### THE AGRICULTURAL WAGES (SCOTLAND) ACT 1949

- 11 The Agricultural Wages (Scotland) Act 1949 shall be amended in accordance with this Part of this Schedule.

##### *Section 3*

- 12 (1) Section 3 (power of Scottish Agricultural Wages Board to fix minimum rates of wages, holidays to be allowed etc.) shall be amended as follows.

- (2) After subsection (2A) there shall be inserted—

“(2B) No minimum rate fixed under this section which is an hourly rate shall be less than the national minimum wage.

(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) After subsection (7) there shall be added—

“(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.

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- (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 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 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.”

#### *Enforcement*

13           After section 3 there shall be inserted—

#### “3A Enforcement.

- (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.

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- (2) In subsection (1) of this section “the enforcement provisions of the National Minimum Wage Act 1998” means the following provisions of that Act—
- (a) sections 9 to 11 (records);
  - (b) section 14 (powers of officers);
  - (c) sections 17 and 19 to 22 (enforcement of right to national minimum wage);
  - (d) sections 23 and 24 (right not to suffer detriment);
  - (e) section 28 (evidence: reversal of burden of proof in civil proceedings);
  - (f) sections 31, 32 and 33(4) and (5) (offences);
  - (g) section 48 (superior employees); and
  - (h) 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—
- (a) any reference to that 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 that Act) shall be taken as a reference to a worker employed in agriculture (within the meaning of this Act);
  - (c) 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;
  - (d) 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;
  - (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
  - (f) any reference to a pay reference period shall be disregarded.
- (4) 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 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.”

#### *Section 4*

14 In section 4 (enforcement of wages and holiday orders) the following provisions shall cease to have effect—

- (a) in subsection (1)—
  - (i) paragraphs (a), (b) and (d); and
  - (ii) the words “and, in the case of an offence consisting of a failure to pay wages” onwards;

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- (b) subsection (2);
- (c) in subsection (3), the words “has paid wages at not less than the minimum rate of” and “, as the case may be”; and
- (d) subsection (4).

#### *Section 5*

15 (1) Section 5 (permits to infirm and incapacitated persons) shall be amended as follows.

(2) In subsection (1)—

- (a) for “the last preceding section relating to payment of wages at not less than the minimum rate” there shall be substituted “subsection (1) of section 31 of the National Minimum Wage Act 1998 as it applies for the purposes of this Act (offence of refusing or wilfully neglecting to pay worker at applicable rate)”; and
- (b) for “any legal proceedings under the last preceding section for failing” there shall be substituted “any legal proceedings under that subsection, as it so applies, for refusing or wilfully neglecting”.

(3) After subsection (1) there shall be inserted—

“(1A) Every permit under subsection (1) of this section (whenever granted) shall be deemed to contain a condition that the worker to whom it is granted must at any time be paid at a rate which—

- (a) in the case of an hourly rate, is not less than the national minimum wage in force at that time, or
- (b) in the case of a rate other than an hourly rate, is such as to yield an amount of wages for each hour worked which is not less than the hourly amount of the national minimum wage in force at that time.

(1B) The condition which a permit is deemed to contain by virtue of subsection (1A) of this section—

- (a) overrides any other condition which the permit contains as to payment of wages, to the extent that that other condition provides for payment of wages at any time at a lower rate; but
- (b) is without prejudice to any other condition which the permit contains as to payment of wages, to the extent that that other condition provides for payment of wages at any time at a higher rate.”

(4) In subsection (2)—

- (a) for “the preceding subsection” there shall be substituted “subsection (1) of this section”; and
- (b) for “any legal proceedings under the last preceding section for failing” there shall be substituted “any legal proceedings under section 31(1) of the National Minimum Wage Act 1998, as it applies for the purposes of this Act, for refusing or wilfully neglecting”.

#### *Section 11*

16 Section 11(1)(a) (invalidity of certain agreements) shall cease to have effect.

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*Status: This is the original version (as it was originally enacted).*

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### Section 12

- 17 (1) Section 12 (officers) shall be amended as follows.
- (2) Subsection (4)(a) (power to institute civil proceedings on behalf of worker on account of payment of wages at less than the applicable minimum rate etc) shall cease to have effect.
- (3) At the end of the section there shall be added—
- “(7) The powers conferred by subsection (3) of this section are not exercisable in any case where corresponding or similar powers conferred by any of the enforcement provisions of the National Minimum Wage Act 1998, as they have effect for the purposes of this Act, are exercisable by virtue of section 3A of this Act.
- (8) In subsection (7) of this section, “the enforcement provisions of the National Minimum Wage Act 1998” has the same meaning as in subsection (1) of section 3A of this Act.”

#### *Information obtained by national minimum wage officers*

- 18 After section 15 there shall be inserted—

#### **“15A Information obtained by national minimum wage officers.**

- (1) This section applies to information which has been obtained by an officer acting for the purposes of the National Minimum Wage Act 1998.
- (2) This section does not apply to any information to the extent that the information relates to—
- (a) any failure to allow holidays directed to be allowed by an order under section 3 of this Act; or
- (b) any terms and conditions of employment fixed by such an order by virtue of subsection (1)(c) of that section.
- (3) Information to which this section applies may, with the authority of the relevant Minister, be supplied to the Secretary of State for use for any purpose relating to this Act.
- (4) Information supplied under subsection (3) of this section shall not be supplied by the recipient to any other person or body unless—
- (a) it could be supplied to that person or body under that subsection; or
- (b) it is supplied for the purposes of any civil or criminal proceedings relating to this Act;
- and shall not be supplied in those circumstances without the authority of the relevant Minister.
- (5) This section does not limit the circumstances in which information may be supplied or used apart from this section.
- (6) In this section “the relevant Minister” means the Minister of the Crown with the function of appointing officers under section 13(1)(a) of the National Minimum Wage Act 1998.”

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*Status: This is the original version (as it was originally enacted).*

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*Section 17*

- 19 (1) Section 17 (interpretation) shall be amended as follows.
- (2) In subsection (1) the following definition shall be inserted in the appropriate place—
- ““the national minimum wage” means the single hourly rate for the time being in force by virtue of regulations under section 1(3) of the National Minimum Wage Act 1998, but this definition is subject to subsection (1A) of this section;”.
- (3) After subsection (1) there shall be inserted—
- “(1A) If, in the case of persons of any description, regulations under subsection (2) of section 3 of the National Minimum Wage Act 1998—
- (a) prevent them being persons who (within the meaning of that Act) qualify for the national minimum wage; or
- (b) prescribe a rate (“the reduced rate”) for the national minimum wage other than the single hourly rate for the time being prescribed under section 1(3) of that Act,
- this Act shall have effect in relation to persons of that description as if in a case falling within paragraph (a) above the national minimum wage were nil and in a case falling within paragraph (b) above the national minimum wage were the reduced rate.”

*Relationship between national minimum wage and agricultural wages legislation*

- 20 After section 17 there shall be inserted—
- “17A Relationship between this Act and the National Minimum Wage Act 1998.**
- (1) Except so far as expressly provided by this Act, nothing in the National Minimum Wage Act 1998 or in regulations made under that Act affects the operation of this Act.
- (2) This Act is subject to—
- (a) section 46 of the National Minimum Wage Act 1998; and
- (b) section 47 of that Act and any regulations made under that section.”