

SCHEDULES

SCHEDULE 2

AMENDMENTS RELATING TO REMUNERATION ETC OF AGRICULTURAL WORKERS

PART III

THE AGRICULTURAL WAGES (REGULATION) (NORTHERN IRELAND) ORDER 1977

- 21 The Agricultural Wages (Regulation) (Northern Ireland) Order 1977 shall be amended in accordance with this Part of this Schedule.

Article 2

- 22 (1) Article 2 (interpretation) shall be amended as follows.
(2) In paragraph (2) the following definition shall be inserted at 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 paragraph (2A);”.

- (3) After paragraph (2) there shall be inserted—

“(2A) 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 Order shall have effect in relation to persons of that description as if in a case falling within sub-paragraph (a) the national minimum wage were nil and in a case falling within sub-paragraph (b) the national minimum wage were the reduced rate.”

Relationship between the national minimum wage and agricultural wages legislation

- 23 After Article 2 there shall be inserted—

Relationship between this Order and the National Minimum Wage Act 1998

“2A (1) Except so far as expressly provided by this Order, nothing in the National Minimum Wage Act 1998 or in regulations made under that Act affects the operation of this Order.

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- (2) This Order 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.”

Article 4

- 24 (1) Article 4 (power of Agricultural Wages Board for Northern Ireland to fix minimum rates of wages) shall be amended as follows.
- (2) After paragraph (1) there shall be inserted—
- “(1A) No minimum rate fixed under this Article which is an hourly rate shall be less than the national minimum wage.
- (1B) No minimum rate fixed under this Article 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 paragraph (12) there shall be added—
- “(13) If the Board makes, or purports to make, an order fixing a minimum rate under this Article—
- (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.
- (14) If, at any time after a minimum rate which is an hourly rate comes into effect under this Article, 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.
- (15) If, at any time after a minimum rate other than an hourly rate comes into effect under this Article, 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.
- (16) Paragraphs (13) to (15) are without prejudice to the power of the Board to make further orders under this Article fixing any minimum rates.
- (17) Where an order under this Article fixes any particular minimum rate of wages by reference to two or more component rates, of which—

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- (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 Article apply in relation to the principal component rate and not the supplemental or additional component rates.
- (18) The national minimum wage provisions of this Article 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).
- (19) The national minimum wage provisions of this Article do not apply in relation to any minimum rate fixed under this Article by virtue of Article 5 or 8(5), 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 employed in agriculture are treated as circumstances in which, or times at which, a person is to be regarded as working.
- (20) In this Article “the national minimum wage provisions of this Article” means paragraphs (1A), (1B) and (13) to (15).”

Article 6

- 25 (1) Article 6 (permits exempting, in certain cases, payment of minimum rate) shall be amended as follows.
- (2) In paragraph (1), after “the employment of the worker from” there shall be inserted “(a)” and after “not less than the minimum rate” there shall be inserted the word “or” and the following sub-paragraph—
- “(b) any legal proceedings under section 31(1) of the National Minimum Wage Act 1998 as it applies for the purposes of this Order (offence of refusing or wilfully neglecting to pay worker at applicable rate).”
- (3) After paragraph (1) there shall be inserted—
- “(1A) Every permit under paragraph (1) (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 paragraph (1A)—
- (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

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- (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 paragraph (2), after “shall not be liable to” there shall be inserted “(a)” and after “less than the minimum rate,” there shall be inserted the word “or” and the following sub-paragraph—
 - “(b) any legal proceedings under section 31(1) of the National Minimum Wage Act 1998 as it applies for the purposes of this Order,”.
- (5) In paragraph (3), after “any legal proceedings” there shall be inserted “(a)” and after “under this Order” there shall be inserted the word “or” and the following sub-paragraph—
 - “(b) under section 31(1) of the National Minimum Wage Act 1998 as it applies for the purposes of this Order,”.

Enforcement

26 After Article 8 there shall be inserted—

“Enforcement.

- 8A (1) The enforcement provisions of the National Minimum Wage Act 1998 shall have effect for the purposes of this Order as they have effect for the purposes of that Act, but with the modifications specified in paragraphs (3) and (4).
- (2) In paragraph (1) “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 to 33 (offences);
 - (g) section 48 (superior employers); and
 - (h) section 49 (restriction on contracting out).
- (3) In the application of any provision of the National Minimum Wage Act 1998 by paragraph (1)—
 - (a) any reference to that Act, other than a reference to a specific provision of it, includes a reference to this Order;
 - (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 Order);
 - (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 sub-paragraph (c), any reference to the national minimum wage, other than a reference to the hourly amount of the national

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- minimum wage, shall be taken as a reference to the minimum rate applicable under this Order;
- (e) subject to sub-paragraph (c), 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 Order; and
 - (f) any reference to a pay reference period shall be disregarded.
- (4) In the application of section 33 of the National Minimum Wage Act 1998 (proceedings for offences) by paragraph (1), any reference to the Secretary of State shall be taken to include a reference to the Department of Agriculture for Northern Ireland.
- (5) In Article 135A of the Employment Rights (Northern Ireland) Order 1996 (unfair dismissal: national minimum wage) in paragraph (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 Order; 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 Order.”

Information obtained by national minimum wage officers

27 After Article 11 there shall be inserted—

Information obtained by national minimum wage officers

- “11A(1) This Article applies to information which has been obtained by an officer acting for the purposes of the National Minimum Wage Act 1998.
- (2) This Article does not apply to any information to the extent that the information relates to any failure to allow holidays in accordance with Article 8.
- (3) Information to which this Article applies may, with the authority of the Secretary of State, be supplied to the Department for use for any purpose relating to this Order.
- (4) Information supplied under paragraph (3) 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 paragraph; or
 - (b) it is supplied for the purposes of any civil or criminal proceedings relating to this Order;
- and shall not be supplied in those circumstances without the authority of the Secretary of State.
- (5) This Article does not limit the circumstances in which information may be supplied or used apart from this Article.”