



# Agricultural Wages in Scotland

Eleventh Edition

A Guide  
for  
Workers  
and  
Employers

What you need to know about  
The Agricultural Wages (Scotland) Order (No.54)

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# introduction

The first edition of this Guide was produced in 1996 to help employers and workers understand the new rules resulting from the simplification of the Agricultural Wages (Scotland) Order (No 44) 1996.

This eleventh edition of the Guide incorporates the new rates of pay and other changes introduced with effect from Monday 1 January 2007.

These rates and other changes are contained in the Agricultural Wages (Scotland) Order (No 54) 2006, ("the Order"), a copy of which was issued with this Guide. The Order contains the detailed legal requirements for the calculation of minimum pay, holidays etc, and has to be written in the precise legal terms required to make the Order enforceable in law. The following guidance notes attempt to explain the rules in simpler terms and to answer some of the questions which are most likely to arise.

If you require a copy of this Guide or the Agricultural Wages Order in Gaelic, Polish or Russian, please contact us.

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Where the National Minimum Wage becomes higher than the hourly or other minimum rate of pay prescribed under this Order, the Board is taken to have made an Order fixing minimum rates equal to the National Minimum Wage. Where these circumstances apply, employers affected by the Order will then be required to pay minimum rates of pay equal to the National Minimum Wage in respect of any period beginning at or after the time when the National Minimum Wage becomes higher than the minimum rates under this Order.

# 1. Important Notes

- The information contained in this Guide is provided as guidance only. It should not be seen as providing legal advice on the Order or on legal matters generally. If you are unclear about the terms or the effect of the Order, you should contact your legal adviser.
- The order makes provisions for all workers except those who are of “school age”, within the meaning of section 31 and 33 of the Education (Scotland) Act 1980. This Guide does not, therefore, apply to persons of school age.
- For convenience, the main entries in the Guide have been cross-referenced back to the corresponding sections of Wages Order No 53. These cross-references are shown in *italics* and are placed in brackets, eg

*Rates of Pay (Parts 2 and 3) or  
Who gets paid what? (Articles 5 and 6)*

- The rates of pay quoted in this Guide relate to the **minimum** rates set for 2007. It is likely that new rates will be introduced with effect from 1 October 2007 and if this edition of the Guide is being used after that date, care must be taken to apply any revised rates quoted in subsequent Wages Orders.
- The Order contains important definitions of commonly used terms and explains certain other features of the Order. The definitions and explanations are contained in *Part 1* of the Order.
- The Order sets out the **minimum** rates of pay and other conditions to which workers are entitled by law. Employers may, at their discretion, pay more than these minimum rates or offer better conditions of service.

## 2. About Wages Order No 54

### When does the new Order come into effect?

- The Order will be effective from Monday, 1 January 2007.

### Key Features

- The removal of age related pay bands following the introduction of the Employment Equality (Age) Regulations 2006.
- A minimum hourly rate of £5.35 for all workers in the first 26 weeks of employment.
- A minimum hourly rate of £5.70 for all workers employed for more than 26 weeks by the same employer.
- The existing 10 week qualifying period to be extended to 26 weeks.
- The dog allowance to be increased to £4.33 per week for each dog up to a maximum of 4.
- The rates of pay which come into effect on 1 January 2007 are compatible with National Minimum Wage (NMW) requirements where necessary.

## 3. Rates of Pay (*Parts 2 and 3*)

### Who gets paid what? (*Articles 5 and 6*)

- There are 2 rates of pay. One is for workers who have been with their present employer for not more than 26 weeks and the other for workers who have been with their present employer for more than 26 weeks.
- It is important to note that these hourly rates apply equally to full-time workers, part-time workers, students, workers on piece work, etc. They also apply equally no matter what type of work is done.
- If an employer wishes to pay more to a worker employed on particular duties, then he can do so. What he cannot do is pay less than the minimum rates set out in the Order.
- The minimum hourly rates of pay are as follows:

<b>All Ages of Worker</b>	<b>Minimum Hourly Rates</b>	
	<b>Up to 26 Weeks 1 January 2007</b>	<b>After 26 Weeks 1 January 2007</b>
	£5.35	£5.70

### What about workers who have qualifications? (*Article 7*)

- Workers who have been with the same employer for more than 26 weeks and who hold a Scottish (or National) Vocational Qualification in an agricultural subject at Level III or above are entitled to be paid an additional sum of at least £0.86 per hour from 1 January 2007.
- This additional sum is also payable to workers who hold an apprenticeship certificate approved by ATB Landbase (now known as LANTRA), after the worker has been with the same employer for more than 26 weeks.

For more information contact LANTRA SCOTLAND, Newlands, Scone, Perth PH2 6NL, tel no. 01738 553311, fax 01738 553322 or e-mail [lantra.scotland@lantra.co.uk](mailto:lantra.scotland@lantra.co.uk)

## What about skilled workers who have no formal qualifications? (*Article 7*)

- Workers who hold a Certificate of Acquired Experience will also be entitled to be paid an additional sum of at least £0.86 per hour from 1 January 2007.
- Applications for the Certificate of Acquired Experience closed on 31 December 1997, although the Certificate remains valid beyond that date.

## What payments are due for overtime working? (*Article 8*)

- Overtime must be paid when a worker works for more than 8 hours on any day or for more than 39 hours in any week. Note that no overtime hour can be counted twice, ie either it is paid because it is in excess of 8 hours for the day or because it is in excess of 39 hours for the week, but not both.
- The minimum hourly rate of payment for overtime is the minimum hourly rate of pay to which the worker is entitled multiplied by 1.5 (the additional sum explained above does not form any part of the calculation; neither need it be paid in addition to the overtime rate). The minimum hourly overtime rates are as follows:

<b>All Ages of Worker</b>	<b>Minimum Hourly Overtime Rates</b>	
	<b>Up to 26 Weeks 1 January 2007</b>	<b>After 26 Weeks 1 January 2007</b>
	£8.03	£8.55

## 4. Holidays (Part 4)

### How many holidays should workers get? (Article 9)

- The holiday year will cover the period 1 January to 31 December 2007.
- The holiday entitlement set out in Part 4 of the Order complies with the provisions of the Working Time Regulations (WTR).
- A worker is entitled to 5 weeks holiday per year. A week is equivalent to the number of days that an employee would be expected to work in the course of a regular working week. In addition, 4 special holidays are set. Details of these dates can be found on page 6 (article 10).

**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 15 days.

- Where the number of days worked varies from week to week, the average number of days worked per week over a 12 week period should be calculated.
- When a worker begins working with an employer during the holiday year, his entitlement will be in relation to the part of the holiday year still remaining, plus any of the special holidays which fall within the same period.
- During the first year of employment, the number of days holiday that a worker has a right to take at any time is limited to the amount he has accrued at that time.
- 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  $10\frac{1}{2}$  days holiday (the annual entitlement of 25 days multiplied by  $\frac{5}{12}$  equals 10.42 days rounded up to  $10\frac{1}{2}$  days).

- The WTR make it clear that a worker is entitled to a minimum of 4 weeks holiday in a holiday year. There is no provision for payment in lieu of any part of these 4 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 1:** A worker, who normally works 5 days per week, has, at the end of the holiday year, used only 13 days of his holiday entitlement. In addition to this, he has had all of his Special holidays. The balance of untaken holidays is 12 days. Seven of these days fall within the entitlement set by WTR, and as such, they attract no payment in lieu. The remaining five days, being over and above the WTR entitlement, would attract payment in lieu.

**Example 2:** A worker, who normally works 5 days per week, leaves his place of employment on 1 September. As he has worked for three-quarters of the year, he would have been entitled to three-quarters of his holiday entitlement: three-quarters of 25 days = 18.75 days, rounded up to 19 days. He has used only 10 of these days, and has also had all of the Special holidays he has been due. The worker would be entitled to receive payment in lieu for all 9 days.

- If a worker's employment is terminated, then he will be entitled to payment in lieu for **all** holidays to which he is due, calculated up until the date of the termination of employment.

### What about special holidays? (*Article 10*)

- In 2007, each worker will be entitled to 4 special holidays as follows:
  - Christmas Day;
  - New Year's Day;
  - the first Monday in May;
  - the first Monday in October;
- If any of these days fall on a day of the week on which the worker would not normally be required to work, then the next normal working day will be allowed as a holiday.

### Is time allowed off for bereavements? (*Article 11*)

- In the event of the death of a worker's child, parent, spouse, or someone they live with with as if they are married to them (see *article 11(2)* of the Order for a full definition), the worker is entitled to at least 3 days paid bereavement leave.

## What payments are made for holidays taken by a worker? (Article 12)

- A worker is to be paid for his leave according to sections 221-224 of the Employment Rights Act 1996, which determine the amount of a week's pay for the purposes of that Act. A normal week's pay is therefore:
  - for a worker with regular working hours, what he would earn for a normal working week;
  - for a worker whose normal working hours vary from week to week, the average hourly rate of pay he gets multiplied by the average of his normal weekly working hours over the previous 12 weeks;
  - for a worker with no normal working hours, the average pay received over the previous 12 weeks.
- A worker's normal working hours are said to be the normal hours fixed by his contract of employment. Overtime hours are not normal working hours unless a worker's contract fixes a minimum number of hours (in which overtime is included) which is more than his notional fixed hours.

**Example:** A worker, with more than 26 weeks continuous employment, who receives the minimum rate of pay, works a week of 39 hours followed by a week of 47 hours. As these hours can be seen to vary from week to week, the average hourly rate of pay would be multiplied by the average of their normal weekly working hours over the previous 12 weeks.

The average hourly rate of pay would be worked out as follows:

$$\begin{aligned} & \mathbf{(39 \text{ hours} \times 2 \text{ weeks} \times \pounds 5.70) + (8 \text{ hours} \times \pounds 8.55) \div 86 \text{ hours}} \\ & \mathbf{= (\pounds 444.60 + \pounds 68.40) \div 86 \text{ hours}} \\ & \mathbf{= \pounds 513.00 \div 86 \text{ hours}} \\ & \mathbf{= \pounds 5.97 \text{ per hour}} \end{aligned}$$

The average hours worked over the previous 12 weeks would be worked out as follows:

$$\begin{aligned} & \mathbf{(39 \text{ hours} \times 6 \text{ weeks}) + (47 \text{ hours} \times 6 \text{ weeks}) \div 12 \text{ weeks}} \\ & \mathbf{= (234 \text{ hours} + 282 \text{ hours}) \div 12 \text{ weeks}} \\ & \mathbf{= 43 \text{ hours}} \end{aligned}$$

$$\begin{aligned} & \text{A week's holiday pay would therefore be } \mathbf{43 \text{ hours} \times \pounds 5.97} \\ & \mathbf{= \pounds 256.71} \end{aligned}$$

## What happens if a worker has to turn out on a holiday? (Articles 9(10) and 13)

- If a worker has to work for any part of a day on which it had been agreed that he would be on holiday (excluding special holidays) the following rules will apply:
  - the day will not be regarded as a holiday taken ie the worker's holiday entitlement will not be reduced in any way;
  - each hour actually worked will be paid at not less than the minimum hourly rate (excluding the additional sum) to which the worker is entitled multiplied by 1.5. A minimum of 4 hours must be paid even if the time worked is less than 4 hours. When more than 4 hours are worked, payment must be made for the actual number of hours worked.
  
- Different arrangements apply when a worker has to turn out on any of the 4 special holidays as shown below.
  
- Firstly, if a worker agrees to work on 25 December or 1 January, the following rules will apply:
  - for each hour worked, the worker must be paid not less than 3 times his minimum hourly rate (including the additional sum if appropriate). In these circumstances there is no requirement to pay for a minimum of 4 hours – payment need only be made for the actual hours worked;
  - also, if Christmas Day or New Year's Day falls on a day on which the worker would normally work, then the day will count as a holiday taken.
  
- Secondly, if a worker agrees to work on the first Monday in May or October, the following rules will apply:
  - one day will be added to the worker's holiday entitlement;
  - the hours worked will be paid at not less than the minimum hourly rate to which the worker is entitled, including the additional sum, if appropriate, with the overtime being paid for any hours worked in excess of 8 on the day or 39 in that week.

**(Note:** These rules will apply when a worker who would not normally have worked on one of the 4 special holidays is required to work on the holiday in lieu to which he is entitled, ie his next normal working day.)

## What happens when the full holiday entitlement is not taken? (*Article 14*)

- Where a worker has not taken all of the days holiday to which he is entitled by the end of the holiday year, that worker will be due payment in lieu for only those days which are over and above the entitlement set by the WTR (4 weeks).
- Where a worker has not taken all of the days holiday to which he is entitled on the termination of his employment, that worker will be due payment in lieu for any days not taken, including all or part of the WTR entitlement.
- Payments in respect of holidays not taken (subject to the above) should be made no later than the first regular pay day after 31 December or within 7 days of the end of employment.

## Who decides when holidays can be taken? (*Article 9(8)*)

- Normally a worker and employer will be able to agree suitable holiday dates between them.
- Where no such agreement can be reached, the employer may give the worker 21 days notice of the date(s) when the holiday can be taken. The employer will allow the holiday to be taken before the end of the holiday year, or before the worker leaves his employment.

## 5. Absences Due to Ill-Health *(Part 5)*

### When does sick pay become payable? *(Articles 15, 16 and 17)*

- To qualify for any sick pay, a worker must have been in continuous employment with the same employer for at least 52 weeks.
- The minimum number of days sick pay to which a worker may be entitled in any period of 52 weeks is calculated by multiplying the number of days he is contracted to work in a week by 13. Thus a worker who is contracted to work 5 days a week would be entitled to 65 days sick pay in any 52 week period.
- Where a worker's absence continues beyond 52 weeks he will become entitled to a further 13 weeks period of sick pay.
- Sick pay is due when a worker cannot work because he is ill, injured or suffering from some other medical condition. Sick pay is also payable when a worker is prohibited from working because of contact with a contagious or infectious disease (but only if he has a certificate from his doctor to confirm this and the certificate is shown to his employer).
- Sick pay is not paid for the first 3 days of each absence. In addition, days when the worker is in receipt of maternity pay, which are paid as holidays, or when the worker is in legal custody, do not qualify for sick pay.
- To qualify for sick pay, the following steps must be taken:
  - the employer must be informed of the absence within 24 hours and the reason for the absence made known (this could be done by phone, in writing, in person, etc);
  - if requested to do so **in writing** by his employer, the worker must provide an explanation **in writing** for his absence. This explanation must be signed by the worker and must be provided within 24 hours of the employer's request;
  - if the period of sickness lasts between 4 and 6 days, the worker must provide his employer with **one** of the following:
    - (a) a statement signed by the worker explaining the reason for his absence,
    - (b) a medical certificate relating to the period of absence, or
    - (c) a certificate of admission to hospital;

- if the period of sickness lasts for 7 days or more, the worker must provide either:
  - (a) a medical certificate, or
  - (b) a certificate of admission to hospital.

**(Note:** When calculating the period of sickness, only contractual working days are taken into account – holidays and non-working days are excluded.)

## How is sick pay calculated? (Article 17)

- Having followed the above guidance and worked out the number of days which qualify for sick pay, each day must be paid according to the following calculation:

the minimum hourly rate to which the worker is entitled (including the additional sum, if appropriate) multiplied by the number of hours which he normally works per week (excluding overtime and limited to no more than 39) and divided by the number of days per week which the worker is contracted to work.

**Example:** For a worker with more than 26 weeks continuous employment who is entitled to the additional sum, contracted to work 36 hours per week over 4 days.

Minimum hourly rate	=	£5.70
Additional sum	=	<u>£0.86</u>
		<u>£6.56</u>
Minimum daily rate of sick pay	=	$\frac{£6.56 \times 32^*}{4} = \mathbf{£52.48}$

\* As the worker is working more than 8 hours per day, 4 hours would be at the overtime rate and therefore deducted from the hours worked.

## What happens when sick pay 13 week period is up?

- The Statutory Sick Pay Scheme (SSP) is payable for a maximum of 28 weeks in any one spell of sickness, employers should be aware that there may on occasions be an obligation to continue paying SSP even when a worker's entitlement to sick pay under articles 15-18 inclusive of the Order is exhausted.

## 6. Benefits *(Part 6)*

### What benefits can be counted towards payment of wages? *(Article 20)*

- The only benefit provided by an employer to a worker which can be counted as part payment of the minimum wage is the provision of a house (or other accommodation) without charge. The value of this benefit will be £1 per week and this amount may be deducted from the worker's pay even if this would reduce the gross pay to below the statutory minimum. (This deduction cannot be made if the accommodation has been declared as unfit for human habitation by the local authority.)
- Other deductions for meals, petrol, Council Tax, etc, may be deducted from pay by written agreement between employer and worker, but such deductions must not reduce the worker's gross pay below the minimum level to which he is entitled according to the Wages Order.

# 7. Miscellaneous Conditions *(Part 7)*

## Standby Duty *(Article 21)*

- A worker is entitled to be paid for each hour spent on standby. The definition of standby duty is given in *article 21(2)* of the Order, but for convenience this can be summarised as time when a worker is required to be readily available for work on a day when he does not normally work or on a day which has been agreed as a holiday or special holiday.
- Payment for each hour during which a worker is on standby should be at a rate which is not less than the agricultural minimum wage rate.
- If a worker on standby is required to work, then he must be paid for each hour actually worked in addition to the time spent on standby. The amount of payment will be determined by the status of the day, which means that:
  - if the day was a day on which the worker did not normally work, then the hours worked would be paid at not less than his minimum overtime rate (see *article 8* of the Order and Section 3 of this guidance note);
  - if the day had been agreed by the worker and the employer as a holiday, then the minimum payment for the work done would be the same as it would be for work on a holiday when the worker was not on standby (see *article 9(10)* of the Order and Section 4 of this guidance note);
  - if the day was one of the special holidays (Christmas, New Year, etc) or a day in lieu of one of the special holidays, then payment would be made in accordance with the rules for work carried out on such days (see *article 13* of the Order and Section 4 of this guidance note).

## Can Pension Contributions still be made? *(Article 22)*

- The arrangements for the payment of pension contributions are not changed by the new Order. These arrangements are outlined below for convenience.
- A worker may choose to have a sum of not less than £4 per week deducted from his pay and paid into a pension fund on his behalf. This can only be done where the worker has given a written instruction to his employer to make these deductions from his pay.
- A worker cannot choose to make pension contributions unless he has been continuously employed by the same employer for at least 10 weeks or is already a member of a pension scheme.
- Deductions from pay for pension purposes will continue to be made until the worker gives a written instruction to his employer that they should stop or when the worker leaves that employment.

## What about Health and Safety Training? (*Article 23*)

- The new Order continues to give workers a right to time off to attend health and safety training, and it also gives employers the right to insist that workers attend such courses.
- The employer and worker may agree that no training is required, but either party can insist on attendance at training courses up to a total of 2 days in any year. The Order does not, of course, stop employers and workers from agreeing that more than 2 days training should be undertaken in a year.
- The health and safety training provisions apply only to workers who have been continuously employed by the same employer for more than 10 weeks.
- The costs of attendance at such training courses will be paid by the employer. These costs include:
  - the cost of course fees etc; and
  - the reasonable cost of travel, meals and accommodation necessary to enable the worker to attend the course.

## Is the Dog Allowance still payable? (*Article 25*)

- If it is necessary for a worker to keep and feed a dog (or dogs) to enable him to do his job, then he should be paid a sum of not less than £4.33 per week for each dog, up to a maximum of 4 dogs.
- The Inland Revenue advises that, for pay purposes this allowance should be treated as non taxable.

## Who is responsible for weather protective clothing? (*Article 26*)

- It is the responsibility of the employer to ensure that a worker is provided with the weather protective clothing which he needs to do his job.
- This means that, where required, the employer must provide wellington boots and PVC coat, leggings and gloves.
- It is the responsibility of the employer to repair or replace clothing which is no longer fit for use. However, it is the responsibility of the worker to repair or replace any items which he has damaged or lost as a result of his own carelessness or other fault.

## Who needs to keep time sheets? (*Article 27*)

- The employer must provide the worker with a time sheet on which he can record the hours he has worked each day.
- The worker should complete time sheets and give them to his employer. The employer must retain these time sheets for at least 3 years.
- There will be no requirement to keep time sheets if the employer uses an automatic system, such as a time clock, to record hours worked.
- Examples of 2 types of time sheet (one covering a week and the other covering a month) are shown at Appendix 2. Other styles may be used as long as they can provide all of the necessary information.

## When should wages be paid? (*Article 28*)

- *Article 28* of the Order requires that all basic pay and overtime should be paid as soon as possible after the hours have been worked. This generally means that all normal hours worked should be paid for at the end of the week or month, or whatever the normal pay period is. (Some payments may have to be carried over into the next accounting period, eg where overtime is worked shortly before pay day and cannot be processed in time.)
- Where a worker is contracted to work varying hours from week to week, or where variable levels of overtime are worked, the employer is not allowed to average out payments across 2 or more pay periods unless the employment is covered by the SIA. Likewise, occasional lump sum payments cannot be regarded as a substitute for prompt and proper payment.
- Holiday pay should generally be paid in advance. Other elements of pay should be paid as early as possible after there is sufficient information available to calculate it.
- Workers contracted to work under the SIA should be paid at the intervals agreed in the contract.

# 8. Stable Income Arrangement (SIA)

## (Part 8)

### What is SIA? (Article 29)

- Wages Order 46 introduced a voluntary option of paying wages in equal instalments. This method of payment is known as the stable income arrangement (SIA).
  - This will allow wages to be paid in equal instalments for each pay period regardless of the number of hours worked in each pay period. Payment by this method ensures that there are no fluctuations in pay where hours vary greatly according to either working patterns or the seasons.

### Who is eligible for the SIA? (Article 29)

- All agricultural workers in Scotland, can, through agreement between worker and employer, be paid by this method. Workers who work differing hours throughout the seasons of the year may benefit by receiving a regular pay at the end of each pay period. It may also benefit employers as outgoings would be consistent from week to week or month to month.

### What conditions have to be met? (Article 30)

- In order for a worker to be paid by this method a written contract of employment between the employer and the worker has to be in place and must specify the number of hours to be worked over a prescribed period e.g. time to be worked over a year.

The payment of such hours must be calculated at not less than the appropriate minimum hourly rate prescribed in Part 2 of the Order in force at the time. Hours which attract the overtime rate must also be separately identified, and paid for at no less than the rates prescribed by Part 3 of the relevant Order. Details of how to calculate the payment of hours worked over a year are set out in the following examples:

#### Example 1 – Summer/Winter

13 weeks of 35 hours during the winter and 39 weeks of 40 hours in the summer.

35 hrs x 13 wks x £5.70	=	£2,593.50
39 hrs x 39 wks x £5.70	=	£8,669.70
1 hr x 39 wks x £8.55	=	£333.45
<b>Total</b>	=	<b>£11,596.65</b>

### Example 2 – Weekend On/Weekend Off

Weekend on = 48 hours

Weekend off = 39 hours

39 hrs x 52 wks x £5.70	=	£11,559.60
9 hrs x 26 wks x £8.55	=	£2,000.70
<b>Total</b>	=	<b>£13,560.30</b>

### Example 3

52 weeks of 39 hours per week plus periods of overtime likely to be worked by a 'tractorman'.

39 hrs x 52 wks x £5.70	=	£11,559.60
10 hrs x 4 wks x £8.55	=	£342.00
12 hrs x 2 wks x £8.55	=	£205.20
5 hrs x 4 wks x £8.55	=	£171.00
<b>Total</b>	=	<b>£12,277.80</b>

- The employer must supply time sheets to the worker. The worker, in turn, must complete time sheets in order to record the hours worked. Completed time sheets will require to be maintained by the employer for a period of not less than 3 years.

## What about holiday entitlement and sick pay?

- Entitlement to holidays, absences due to ill-health and the other miscellaneous conditions of the Order apply to those on SIA as they do to workers being paid under Parts 2 and 3 of the Order.

## Would the pay period change?

- The pay period conditions under which a worker is employed need not change if payment by the SIA method is in place. Pay can be made on a weekly, fortnightly or monthly basis. It will be a matter of agreement between the worker and employer as to when pay is to be paid. Instalments should be calculated and paid over the entire period employed, including periods of holiday.

# 9. Working Time Regulations 1998 (S.I. 1998/1833) as amended

- The following provides guidance on the application of some aspects of the Working Time Regulations (WTR). The WTR concerning holiday entitlement have been included in the Order. Section 4 of this Guide gives details of holiday provision for agricultural workers.

## What about working long hours?

- The WTR limit weekly working time to an average of 48 hours over a 17 week period (the averaging period may be extended in certain circumstances). An individual worker may choose to agree to work more than the average 48 hour weekly limit. Should they do so, an agreement to that effect must be made in writing. The worker has the right to bring such an agreement to an end.
- Where such an agreement is in place between the worker and the employer then records must be kept to show the actual hours worked by the worker (the example of time sheets given at Appendix 2 could be used or adapted for this purpose). The employer must maintain completed records, showing which workers have made this type of agreement, and the actual hours worked, for at least 3 years.

## What rest periods are workers entitled to?

- The WTR make provision for weekly rest periods and daily rest breaks. Compensatory rest is allowed for under the WTR should a worker be required to work during a rest period or a rest break. In practice, cases where it is not possible to take compensatory rest due to "exceptional circumstances" will be rare, but will also be self-evident, for example a foreseeable surge of activity at harvest or lambing etc. This flexibility provided for is not something that could be used on a routine basis.

## Who enforces the WTR conditions?

- Agricultural inspectors will continue to enforce the terms and conditions of the Order including the provisions which have been adapted to comply with the WTR. The working time limits will be enforced by the Health and Safety Executive and Local Authorities. The entitlements to rest periods and breaks will be enforced by a worker taking his case to an Employment Tribunal.

## Further Information on the WTR?

- Information on all aspects of the Working Time Regulations can be found at [www.dti.gov.uk/erwork\\_time\\_regs/wtr6.htm](http://www.dti.gov.uk/erwork_time_regs/wtr6.htm)  
Information leaflets can be obtained from Publications, Department of Trade and Industry, telephone number 0845 015 0010.

# 10. Explanatory Notes

- The following notes do not relate directly to the Order but they offer advice, guidance and information which workers and employers may find helpful in a variety of circumstances.

## Scope of Order

- The provisions of this Order apply to workers in agriculture and horticulture (ie market gardens, gardens and nursery grounds, but not private or ornamental gardens from which none or only a small amount of the produce is sold), and also to foresters.
- The provisions of the Order apply to all workers except those who are of "school age", within the meaning of section 31 and 33 of the Education (Scotland) Act 1980. It does not, therefore, apply to persons of school age. There are separate provisions set out in national legislation and in local authority by-laws for the employment of children of school age with which all employers must comply.
- For the avoidance of doubt, the provisions of this Order apply to workers employed in fish farming where the fish farming enterprise comes within the definition of agriculture.

## Void Agreements

- Section 11 of the Agricultural Wages (Scotland) Act 1949 states that any agreement between a worker and an employer which would lead to the worker not enjoying at least the minimum terms and conditions set out in the Orders would be void.
- Examples of void agreements would include the following:
  - an agreement to pay less than the minimum wage in cash even if some compensatory payment in kind was made;
  - an agreement to reduce holiday entitlements or the minimum payments for holidays;
  - an agreement not to pay full overtime rates when overtime was worked;
  - an agreement that a worker should provide his own weather protective clothing.
- Any agreement which means that a worker benefits from payments or other conditions in addition to those set down in the Order is acceptable under the 1949 Act.

## Apprenticeship Scheme

- Information about the approved apprenticeship certificates is available from LANTRA SCOTLAND, NEWLANDS, SCONE, PH2 6NL, TEL NO: 01738 553311, FAX NO: 01738 553322.

## Statement of Terms and Conditions of Employment

- In terms of Section 1 of the Employment Rights Act 1996, employers are required to provide workers with a written statement of particulars of their employment within 2 months of commencing employment. Any changes to the terms and conditions of all employees require to be intimated in writing no later than one month after the change. Appendix 1 to these notes provides a suggested form of written statement which sets out the information required.

## Training

- For the purposes of training courses provided for in *article 23* of the Order, Lantra NTO shall provide, at a standard charge, certificates of training at the end of a course. A specimen certificate is shown overleaf. It is recommended that the certificate(s) provided on completion of the training course be retained by the worker to provide a comprehensive record of training for future employers.

## Further information on Rights and Obligations and Other General Employment Law

The following gives information on various publications and contact telephone numbers which employers and workers may find useful:

- *Individual Rights of Employees*

A guide for employers and employees (PL716) published by the Department of Trade and Industry (DTI) is obtainable free of charge. This guide also gives details of appropriate leaflets available contact:

Any Job Centre Plus  
or from DTI Publications Orderline:  
0845 015 0010  
Website: [www.dti.gov.uk/publications](http://www.dti.gov.uk/publications)

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- *Redundancies*

A guide (PL 718), for employees published by the DTI now includes a claim form and is entitled Redundancy and Insolvency A Guide for Employees contact:

Redundancy Payments Office for Scotland  
Ladywell House, Ladywell Road, Edinburgh  
EH12 7UR Helpline: 0131 316 5600  
Redundancy National Helpline: 0845 1450004

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- *Statutory Sick Pay (SSP)*

Employers obligations under the SSP are contained in the Employers' Manual to SSP (E15) which is available free of charge. An Employee's guide to SSP is available by contacting 0845 302 1479 contact:

Local Inland Revenue or Benefits Agency  
Offices  
Employers' Helpline: 0845 714 3143  
Website: [www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)

■ *Working Tax Credit*

contact:  
Local Inland Revenue Offices  
Helpline: 0845 300 3900  
Website as above

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■ *General Employment Matters*

The Advisory Conciliation and Arbitration Service (ACAS) publish advisory handbooks, codes of practice and advice leaflets including employment matters such as lay-offs, contracts, bullying and harassment contact:  
ACAS Scottish Enquiry Point:  
151 West George Street, Glasgow G2 7JJ  
Helpline: 0845 7474747  
Website: [www.acas.org.uk](http://www.acas.org.uk)

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■ *Working Time Regulations*

For copies of A Guide to Working Time Regulations contact:  
DTI Publications Order line: 0845 015 0010  
Working Time Regulations (WTR) part of DTI website –  
[www.dti.gov.uk/employment/employment-legislation/working-time-regs/index.html](http://www.dti.gov.uk/employment/employment-legislation/working-time-regs/index.html)  
<http://www.dti.gov.uk/employment/employment-legislation/working-time-regs/index.html>  
For assistance on any matters to do with weekly and night working time limits and health assessments contact:  
Health and Safety Executive (HSE) Infoline: 08701 545500  
HSE Information Services  
Caerphilly Business Park  
Caerphilly CF83 3GG  
or contact the Environmental Health Department of your local authority  
For assistance on any matters about time off, rest breaks and paid annual leave contact:  
ACAS Helpline: 0845 7474747  
For information about making a claim or going to an Employment Tribunal  
contact:  
Employment Tribunals Service: 0845 7959775

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■ *National Minimum Wage (NMW)*

For assistance on any matters to do with NMW  
contact:  
NMW confidential helpline: 0845 6000 678  
NMW Enquiries  
Freepost PHQ1  
Newcastle upon Tyne NE98 1ZH  
DTI National Minimum Wage website:  
[www.dti.gov.uk/er/nmw](http://www.dti.gov.uk/er/nmw)

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■ TIGER (Tailored Interactive Guidance on Employment Rights): [www.tiger.gov.uk](http://www.tiger.gov.uk)

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■ *Health & Safety Executive*

Infoline: 0845 345 0055  
Website: [www.hse.gov.uk](http://www.hse.gov.uk)

Specimen certificate for the purposes of *Article 23*  
of the Order.

## **CERTIFICATE OF ATTENDANCE**

**This is to certify that**

.....

**has completed training in**

.....

**Course Duration:**

**1 Day**

**Date:**

**6 July 1998**

**Instructor:**

**Mr S White**

  
**Chairman**

## Ensuring that workers are properly paid

- The employer and the worker both share the responsibility for ensuring that all requirements of the Order are complied with in full. This guidance note seeks to help both parties to understand what they are required to do, and officials of The Scottish Executive Environment and Rural Affairs Department will always try to answer any questions.
- Officials of the Department will also carry out checks at employers' places of business, both by way of routine spot checks and in response to complaints by workers about their pay and conditions. These visits will normally involve interviews with the employer and one or more workers, and probably a check of records relating to pay, holidays, hours worked, etc.
- The Department has found it to be beneficial for an employer to maintain records to show that the appropriate payments due to workers have been made. For example:
  - payments due for holidays taken and not taken,
  - payments due for bereavement leave and parental leave,
  - payments due for working on special holidays, standby, etc.
- Where the Department considers that a worker has not received his full entitlement, the employer will be advised of the problem in writing and invited to remedy the position. For a minor problem, this may mean the employer taking remedial action to ensure that it does not happen again. For a more serious problem, a payment of arrears of pay to the worker may be necessary.
- If an acceptable solution cannot be agreed, then the matter may have to be referred to an Employment Tribunal for settlement.
- If a worker believes that he is not being paid in accordance with the Order, then he should contact the Secretary, Scottish Agricultural Wages Board, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY, Tel No: 0131-244-6397. E-mail sawb@scotland.gsi.gov.uk
- Complaints about the standard of service received from the Scottish Executive Environment and Rural Affairs Department Agricultural Wages enforcement staff, should be directed initially to the Head of Agriculture Policy Division, Room 255, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.
- If having referred the matter to the Head of Agriculture Policy Division you remain dissatisfied you may refer the matter to the Minister for Environment and Rural Development, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.
- Where an employer or worker considers that there has been maladministration by Scottish Executive Environment and Rural Affairs Department staff in the handling of a routine inspection or complaint case, as opposed to the outcome of the case, he may refer the matter to the Scottish Public Services Ombudsman, 4 Melville Street, Edinburgh EH3 7NS, Tel: Freephone 0800 377 7330, Fax: Freephone 0800 377 7331. Complaints must, normally, be submitted in writing within 12 months of the event giving rise to the complaint. Further information regarding the Scottish Public Services Ombudsman is available at [www.spsso.org.uk](http://www.spsso.org.uk).

# 11. Members of the Scottish Agricultural Wages Board

The Scottish Agricultural Wages Board has the following membership:

■ Independent members appointed by Scottish Ministers:

John Menzies, Chair  
Margaret Anderson  
Peter Jeary  
Dr Roger Killick  
John Wilson, OBE

■ Employers' representative members nominated by NFU Scotland and the Scottish Rural Property and Business Association:

Scott Walker	
Margaret Baillie	NFU Scotland, Rural Centre, West Mains,
Robin Christie	Ingliston, Newbridge, EH28 8LT,
John Mitchell	Tel No: 0131-472-4000
Jamie Smart	

Jonathan Hall	Scottish Rural Property and Business Association, Stuart House, Eskmills Business Park, Musselburgh, EH21 7PB, Tel No: 0131-653-5400
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■ Employees' representative members nominated by the Rural, Agricultural & Allied Workers National Trade Group (Scotland) of T & G Scotland:

Robert Stewart	District Office
William McCairney	21 Logie Mill, Unit 11
Frances MacKay	Beaverbank Business Park
Scott Walker	Edinburgh EH7 4HQ
Scott Foley	Tel No: 0845 345 0145

■ Secretary:

Ronnie Grady  
Pentland House, 47 Robb's Loan,  
Edinburgh, EH14 1TY,  
Tel No: 0131-244-6397  
E-mail sawb@scotland.gsi.gov.uk

# Appendix 1

## Statement of Particulars of Employment

In terms of section 1 of the Employment Rights Act 1996 an employer is required to give an employee a statement of particulars of employment within 2 months of commencing employment. Where a change occurs in any of the matters covered in the statement, employees must be given written notification of this as soon as possible and, in any event, within one month. The following statement is a list of all the particulars which the employer is required to give. It is, however, intended as a guide only. The employer is strongly advised to consult his own solicitors as to how the statement should be completed in any particular case and in any event must have regard to the provisions of the Wages Order.

1. Employer (Name) .....
- Employee (Name) .....

2. **Date of Employment**

(a) Your employment began on (date)

.....

(b) Continuous employment (**enter this section only where applicable**). As previous employment with [specify relevant previous employer]

.....

counts as part of your period of continuous employment your employment is deemed to have begun on (date)

.....

3. **Job Title**

You are employed as a .....

The employer reserves the right to transfer you to other suitable duties if there is no work available at your job OR it is necessary for the needs of the business. (The employer should specify as required.)

4. **Wages**

(a) Your rate of pay will be:

.....

.....

(where applicable the method of calculating remuneration should be entered in this section including benefits and advantages).

(b) Pay interval

The interval at which remuneration will be paid will be weekly/monthly/at the following specified intervals [delete whichever is inapplicable]

.....

.....

5. **Hours**

Your terms and conditions in relation to hours of work are as follows:

.....  
.....

(The Agricultural Wages (Scotland) Order sets a minimum calculation for overtime hours of the minimum hourly rate x 1.5).

6. **Holidays**

Your entitlement to holidays, including special holidays and holiday pay, is as follows:

.....  
.....

7. **Place of Work**

Your place of work will be [where employee is required or permitted to work in various places include an indication of that and of the address of the employer]

.....  
.....

8. **Sickness**

Your terms and conditions relating to incapacity for work due to sickness, injury or other medical condition and to sick pay are as set out in the Agricultural Wages (Scotland) Order as amended from time to time or as set out hereunder [delete whichever is inapplicable].

.....  
.....

(Where they differ from the Wages Order you should enter any alternative terms and conditions in this section eg agreed qualifying days for Statutory Sick Pay purposes.)

9. **Pensions**

THERE IS/IS NOT a pension scheme.

(If applicable) – The terms and conditions relating to the pension scheme are supplied to you with this statement. A contracting-out certificate under the Social Security Pensions Act 1975 is/is not in force [delete where applicable].

10. **Termination of Contract**

The dismissal procedures which apply to you can be found in the Employment Act 2002 (Dispute Resolution) Regulations 2004, as amended from time to time.

If applicable:

Your contract is for a fixed term and will terminate on (date):

.....

Your employment under this contract is not intended to be permanent and is expected to continue only for [.....] weeks.

11. **Notice**

The amount of notice of termination of your employment you are entitled to receive is:

.....

The amount of notice you are required to give is:

.....

12. **Disciplinary Procedures**

The disciplinary rules which apply to you are:

(an explanation of the employer’s rules is required here. For more details about the statutory disciplinary, dismissal and grievance procedures that must be complied with see the Employment Act 2002 (Dispute Resolution) Regulations 2004).

.....

.....

If you are dissatisfied with any disciplinary or dismissal decision which affects you, you should apply in the first instance to:

(specify the name of the person to whom the employee can apply)

.....

Such application should be made as follows:

(specify manner in which application should be made)

.....

.....

13. **Grievances**

If you have a grievance about your employment you should apply in the first instance to (specify the name of the person to whom the employee can apply)

.....

Such application should be made as follows:

(specify manner in which application should be made)

14. **Other Terms and Conditions**

(any collective agreements which directly affect the terms and conditions of employment should be referred to, if there are none this requires to be stated).

.....

.....

.....

Signature of Employer .....

Signature of Employee .....

# Appendix 2

## Time Sheet (Weekly)

Employee \_\_\_\_\_

Week commencing Monday (day/month/year) \_\_\_\_\_

Day	Time Worked	Total Hours:Minutes
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Weekly Total (Hours:Minutes)		

Employee's Signature \_\_\_\_\_ Date \_\_\_\_\_

Approved by \_\_\_\_\_ Date \_\_\_\_\_

## Time Sheet (Monthly)

Employee \_\_\_\_\_

Month \_\_\_\_\_ Year \_\_\_\_\_

Date	Time Worked	Daily Total (Hours:minutes)
Mon		
Tue		
Wed		
Thu		
Fri		
Sat		
Sun		
Mon		
Tue		
Wed		
Thu		
Fri		
Sat		
Sun		

Weekly total  
(Hours:minutes)

Weekly total  
(Hours:minutes)

## Time Sheet (Monthly)

Date	Time Worked	Daily Total (Hours:minutes)
Mon		
Tue		
Wed		
Thu		
Fri		
Sat		
Sun		Weekly total (Hours:minutes)
Mon		
Tue		
Wed		
Thu		
Fri		
Sat		
Sun		Weekly total (Hours:minutes)
Mon		
Tue		
Wed		
Thu		
Fri		
Sat		
Sun		Weekly total (Hours:minutes)
		Monthly total (Hours:minutes)

Employee's Signature \_\_\_\_\_ Date \_\_\_\_\_

Approved by \_\_\_\_\_ Date \_\_\_\_\_



SCOTTISH EXECUTIVE

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Environment and Rural Affairs Department