



# Agricultural Wages in Scotland

Twenty Fourth Edition

A Guide  
for  
Workers  
and  
Employers

What you need to know about  
The Agricultural Wages (Scotland) Order (No.67)



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

# Addendum

The following additional information is being made available in this publication on 31/07/20:

EU citizens currently living in the UK will have to apply to the EU Settlement Scheme by 30 June 2021 if they want to keep living in the UK after this date.

The application to the UK Government's EU Settlement Scheme is an online application and is available now.

The Home Office guidance on the Scheme, including who is eligible to apply and what applicants need to prove, is here: <https://www.gov.uk/settled-status-eu-citizens-families>.

The Scottish Government has also produced some materials to support those applying to the EU Settlement Scheme, including a guide for employers here: <https://www.gov.scot/publications/eu-citizens-staying-in-scotland-package-of-support/>

Finally, under the Stay in Scotland campaign, the Scottish Government is part funding Citizens Advice Scotland to deliver an Advice and Support service for those applying to the EU Settlement Scheme. This includes a national Freephone helpline which is staffed by qualified advisers. You can receive information, advice and support by calling the helpline on 0800 916 9847.

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# Introduction

**T**he 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 twenty fourth edition of the Guide incorporates the new rates of pay and other changes introduced with effect from Wednesday, 1 April 2020.

These rates and other changes are contained in the Agricultural Wages (Scotland) Order (No. 67) 2020 ('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 there is any confusion between the Wage Order and/or the Guide, the provisions of the Wages Order take precedence.

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

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Where the **National Minimum Wage (NMW)** and the **National Living Wage (NLW)** become higher than the hourly or other minimum rate of pay prescribed under this Order, the Wages Board has taken to have made an Order fixing minimum rates equal to the **NMW** and the **NLW**.

If you are unclear about the terms or effect of the **NLW** or the **NMW** then you should seek guidance from your legal or financial adviser.

# 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 who are required by law to attend school.
- For convenience, the main entries in the Guide have been cross-referenced back to the corresponding sections of Wages Order No. 67. These cross-references are shown in italics and are placed in brackets, eg:

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

### *Who gets paid what? (Articles 5, 6 and 7)*

- The rates of pay quoted in this Guide relate to the **minimum** rates set from 1 April 2020. New rates will be introduced with effect from 1 April 2020 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. Any such rates and conditions agreed by the employer and the worker will be due as a matter of contract law.

## 2. About Wages Order No. 67

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

- The Order will be effective from Wednesday, 1 April 2020.
- The rates of pay which come into effect on 1 April 2020 are compatible with NMW and NLW requirements where necessary.

### Key Features

- A minimum hourly rate of £8.72 for all workers.
- A minimum hourly rate of £5.46 for workers who undertake an SCQF Level 4 or 5 or equivalent in Agriculture/Horticulture.
- The dog allowance to be increased to £6.43 per week for each dog up to a maximum of 4.
- The additional sum payable to workers with appropriate qualifications will increase to £1.29 per hour.
- The daily rate of the accommodation off-set for accommodation other than a house is £8.20.
- The minimum hourly rate of £13.08 for overtime for all workers. Please see qualifying criteria for overtime on page 4.

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

### Who gets paid what? (Articles 5, 6 and 7)

- There is a single minimum hourly rate of pay for all agriculture workers.
- It is important to note that this hourly rate applies equally to full-time workers, part-time workers, students, workers on piece work, etc. The rate applies equally no matter what type of work is done.
- If an employer wishes to pay more to a worker employed on particular duties, then they can do so. What they cannot do is pay less than the minimum rate set out in the Order.
- The minimum hourly rate of pay is as follows:

<b>All Ages of Worker</b>	<b>Minimum Hourly Rate Effective from 1 April 2020</b>
	£8.72

- From 1 April 2020 employees who have agreed, as part of the terms of their contract of employment, to study an SCQF Level 4 and/or SCQF Level 5 or equivalent in Agriculture/Horticulture, shall be paid £5.46 per hour for 18 months. This rate applies to apprentices under 19 years of age and those of 19 years or over in the first year of their apprenticeship.

Following this period the minimum hourly rate will be £8.72 until 31 March 2021.

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

- Workers who hold a qualification in an agricultural or production horticulture subject at SCQF 6/7 or above (this includes Scottish (or National) Vocational Qualification at Level 3, National Certificate, Higher National Certificate, Higher National Diploma) are entitled to be paid an additional sum of at least £1.29 per hour from 1 April 2020.
- A qualification in an agricultural or production horticulture subject above Level 3 (SCQF 6/7) must be relevant to the work being carried out.
- This additional sum is also payable to workers who hold a Level 3 (SCQF 6/7) Modern Apprenticeship certificate in agriculture or horticulture [production horticulture pathway only], issued by Lantra.
- For more information contact Lantra Scotland, Inveralmond Business Centre, Auld Bond Road, Perth PH1 3FX, tel no. 01738 310164 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 £1.29 per hour from 1 April 2020.
- 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 and 9)

### **Up to 26 continuous weeks**

- Overtime must be paid when a worker works for more than 8 hours on any day **or** for more than 48 hours in any week. Note that no overtime hour can be counted twice, i.e. either it is paid because it is in excess of 8 hours for the day **or** because it is in excess of 48 hours for the week, but not both.

### **Over 26 continuous weeks**

- 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, i.e. 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 for both up to and over 26 weeks as detailed above is the minimum hourly rate of pay to which the worker is entitled multiplied by 1.5.

## 4. Holidays (Part 4)

### How many holidays should workers get? (Article 10)

- The holiday year will cover the period **1 January to 31 December**.
- The holiday entitlement set out in Part 4 of the Order complies with the provisions of the Working Time Regulations (WTR).
- Holiday entitlement depends on the number of days that an employee would be expected to work in the course of a regular working week (see table below). In addition, two special holidays are set. Details of these dates can be found on page 6 (*article 11*).

Holiday Entitlement	
No of days worked per week	No of days holiday per year
1	8
2	13
3	18
4	23
5	28
6	33
7	38

- 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, their 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 they have accrued at that time.
- Accrual is at the rate of one-twelfth of the annual entitlement at the beginning of each month.
- The WTR make it clear that a worker is entitled to a minimum of 5.6 weeks holiday (28 days for someone working 5 days a week) in a holiday year. There is no provision for payment in lieu of any part of these 5.6 weeks if they are untaken by the end of the holiday year. Payment in lieu will, however, still apply to holidays which are over and above the provisions set by the WTR.
- If a worker's employment is terminated, then they will be entitled to payment in lieu for **all** holidays to which they are due, calculated up until the date of the termination of employment.

## What about special holidays? (*Article 11*)

- In 2020/2021, each worker will be entitled to two special holidays as follows:
  - Christmas Day;
  - New Year's Day.
- If either of these days falls 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 12*)

- In the event of the death of a worker's child, parent, spouse, or someone they live with as if they are married to them (see **article 12(2) of the Order for a full definition**), the worker is entitled to at least three days paid bereavement leave.
- The Parental Bereavement (Pay and Leave) Act 2018 received Royal Assent on 13 September 2018. It entitles employees who find themselves in the tragic situation of having lost a child under the age of 18 to have 2 weeks' bereavement leave and, for those with the necessary qualifying service, paid leave. Regulations are required to bring the schedule to the Act (which creates the statutory entitlements) into force and this is expected to happen in April 2020.

## What payments are made for the holidays taken by a worker? (Article 13)

- A worker is to be paid for his/her 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 the Act.

A normal week's pay is calculated as follows:

- For a worker with regular working hours:
  - (i) If his/her normal working hours are the same every week and pay for work done in those hours does not vary, a week's pay is what he/she earns in a normal working week.
  - (ii) If pay varies with the amount of work done in normal working hours (i.e. the number of hours in a working week does not vary), a week's pay is the average hourly rate of pay in respect of the previous 52 weeks.

From 1 April 2020 holiday pay will be calculated using a 52 week average NOT a 12 week average. This has been introduced as a result of the Taylor Review of Modern Working Practices in 2018. The Employment Rights (Employment Particulars and Paid Leave) (Amendment) Regulations 2018 increase the reference period for determining an average week's pay from 12 weeks to 52 weeks. This is designed to ensure that workers who do not have a regular working pattern throughout the year are not disadvantaged by having to take their holiday at a quiet time of the year when their weekly pay might be lower.

- Overtime: employers' liability to include overtime in holiday pay will vary from case to case. Recent case law confirmed that 'regular' voluntary overtime should be included in the calculation of holiday pay to comply with the Working Time Directive which provides for 20 days annual leave. Recent UK tribunal and European court decisions have confirmed that payments intrinsically linked to the performance of tasks the worker is required to carry out under the contract of employment and payments linked to the worker's professional and personal status should be reflected in holiday pay. This includes commission and may include bonuses. **EMPLOYERS SHOULD TAKE THEIR OWN LEGAL ADVICE IF THEY ARE UNSURE OF THEIR OBLIGATIONS.**

## What happens if a worker has to turn out on a holiday? (Articles 10 and 14)

- If a worker has to work for any part of a day on which it had been agreed that they would be on holiday (excluding special holidays) the following rules will apply:
  - the day will not be regarded as a holiday taken i.e. 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 four hours must be paid even if the time worked is less than four hours. When more than four 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 two special holidays. If a worker is required 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 three times the minimum hourly rate (including the additional sum if appropriate). In these circumstances there is no requirement to pay for a minimum of four hours – payment need only be made for the actual hours worked;
  - in addition, if 25 December or 1 January fall on a day which the worker would normally work, then this day will count as holiday taken – the worker is not entitled to a day in lieu but is entitled to a day's holiday pay on top of any payment for the hours worked that day.

**(Note:** These rules will apply when a worker who would not normally have worked on one of the two special holidays is required to work on the holiday in lieu to which they are entitled, i.e. their next normal working day.)

## What happens when the full holiday entitlement is not taken? (Article 15)

- Where a worker has not taken all of the days holiday to which they are entitled by the end of the holiday year, that worker will be due payment in lieu for only the days which are over and above the entitlement set by the WTR.
- Where a worker has not taken all of the days holiday to which they are entitled on the termination of their employment, that worker will be due payment in lieu for any days not taken.
- 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 seven days of the end of employment.

## Who decides when holidays can be taken? (Article 10(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 their employment, whichever date is the earliest.
- When considering a holiday request, the employer must act reasonably, not in an unreasonable or capricious way.
- In circumstances where an employer refuses a workers request to take a holiday on the date(s) requested, the employer should provide the worker with a justifiable reason for refusal in writing.

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

### When does sick pay become payable? *(Articles 16, 17, 18 and 19)*

- To qualify for any Agricultural Sick Pay (ASP), 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 they are contracted to work in a week by 13. Thus a worker who is contracted to work five 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 they will become entitled to a further 13 weeks period of ASP.
- Sick pay is due when a worker cannot work because they are 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 they have a certificate from their doctor to confirm this and the certificate is shown to their employer).
- Sick pay is not paid for the first three 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 their employer, the worker must provide an explanation **in writing** for their 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 four and six days, the worker must provide their employer with **one** of the following:
    - (a) a statement signed by the worker explaining the reason for their 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 seven 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 18*)

- 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 they normally work 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 52 weeks continuous employment who is entitled to the additional sum, contracted to work 39 hours per week over five days.

Minimum hourly rate	=	<u>£8.72</u>
Additional sum	=	<u>£1.29</u>
		<u>£10.01</u>
Minimum daily rate of sick pay	=	$\frac{\text{£10.01} \times 39}{5} = \text{£78.08}$

## What happens when the 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 21)*

- 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 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.)
- Any deduction an employer makes from a worker's wage in respect of accommodation other than a house shall not exceed £8.20 for each day in the week for which living accommodation is provided.
- 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 they are entitled according to the Wages Order.

## 7. Miscellaneous Conditions *(Part 7)*

### Standby Duty *(Article 22)*

- A worker is entitled to be paid **two hours** of pay at the appropriate rate specified on page 3 of this guide for each period of standby duty undertaken. The definition of standby duty is given in *article 22(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 they do not normally work **or** on a day which has been agreed as a holiday or special holiday. The requirement for a worker to be readily available for work after completing their normal contracted hours is also classified as a standby period.
  
- If a worker on standby is required to work, then they 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 or, the day was a day on which the worker had completed their normal contracted hours, then the hours worked would be paid at not less than their minimum overtime rate (see *article 9* 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 10(10)* of the Order and Section 4 of this guidance note);
  - if the day was one of the special holidays (Christmas or New Year) 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 14* of the Order and Section 4 of this guidance note).

### Can Pension Contributions still be made? *(Article 23)*

- The employer will comply with the employer pension duties in respect of the employee in accordance with Part I of the Pensions Act 2008.

## What about Health and Safety Training? (*Article 24 and 25*)

- 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 two days in any year. The Order does not, of course, stop employers and workers from agreeing that more than two days training should be undertaken in a year.
- 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 26*)

- If it is necessary for a worker to keep and feed a dog (or dogs) to enable them to do their job, then they must be paid a sum of not less than £6.43 per week for each dog, up to a maximum of 4 dogs. This sum is non-taxable. The payment of the dog allowance is mandatory.

## Who is responsible for weather protective clothing? (*Article 27*)

- It is the responsibility of the employer to ensure that a worker is provided with the weather protective clothing which they need to do their 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 they have damaged or lost as a result of their own carelessness or fault of the worker.

## Who needs to keep time sheets? (Article 28)

- The employer **must** provide the worker with a time sheet on which they can record the hours they have worked each day.
- The worker **must** complete time sheets and give them to their employer. The employer **must** retain these time sheets for **at least three 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 two types of time sheet (one covering a week and the other covering a month) are shown at *Appendix 1*. Other styles may be used as long as they can provide all of the necessary information.

## When should wages be paid? (Article 29)

- *Article 29* 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, e.g. 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 two or more pay periods unless the employment is covered by the stable income arrangement (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.

## Pay Slips

- From 6 April 2019, employers paying a worker by the hour must itemise the number of hours paid for in a worker's payslip. The hours can be shown either as a single total or broken down into separate figures for different types of work or different types of pay.
- Where a worker has fixed hours, then there is no requirement to provide a breakdown. The only hours that need to be itemised are hours which are variable, for example, if a salaried employee works variable overtime with additional pay at an hourly rate, then the number of hours overtime will need to be shown.

# 8. Stable Income Arrangement (SIA)

## (Part 8)

### What is SIA? (Article 30)

- Wages Order 46 introduced a voluntary option of paying wages in equal instalments. This method of payment is known as the 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?

- 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 31)

- 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 £8.72	=	£3,967.60
39 hrs x 39 wks x £8.72	=	£13,263.12
1 hr x 39 wks x £13.08	=	£510.12
<b>Total</b>	=	<b>£17,740.74</b>

### Example 2 – Weekend On/Weekend Off

Weekend on = 48 hours

Weekend off = 39 hours

39 hrs x 52 wks x £8.72	=	£17,684.16
9 hrs x 26 wks x £13.08	=	£3,060.72
<b>Total</b>	=	<b>£20,744.88</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 £8.72	=	£17,684.16
10 hrs x 4 wks x £13.08	=	£523.20
12 hrs x 2 wks x £13.08	=	£313.92
5 hrs x 4 wks x £13.08	=	£261.16
<b>Total</b>	=	<b>£18,782.88</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 **three 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 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 1* 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 **three 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 their case to an Employment Tribunal.

## Further Information on the WTR?

- Information on all aspects of the Working Time Regulations can be found at [www.hse.gov.uk](http://www.hse.gov.uk).

# 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 all workers in agriculture and horticulture (i.e. 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 in agriculture 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 their 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.

## Statement of Terms and Conditions of Employment

- From 6 April 2020 all employees or workers beginning their employment or engagement on or after 16 April 2020 must be given a written statement of terms and conditions. Written statement of terms and conditions must be given to workers as well as employees. The majority of written particulars must be provided in a single document on or before the first day of work. There are exceptions for specified terms relating to pensions, collective agreements, training entitlement and certain information about disciplinary and grievance procedures which must be given no later than 2 months after the beginning of employment.

## Training

- For the purposes of training courses provided for in *article 24* 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.

## Useful Contacts

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

- **Statutory Sick Pay (SSP)**

Helpline: 0300 200 3500

Website: [www.gov.uk/statutory-sick-pay](http://www.gov.uk/statutory-sick-pay)

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- **Working Tax Credit**

Helpline: 0345 300 3900

Website: [www.gov.uk/working-tax-credit](http://www.gov.uk/working-tax-credit)

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- **General Employment Matters – ACAS**

The Advisory Conciliation and Arbitration Service (ACAS) publish information on codes of practice employment matters such as redundancy, contracts, bullying, harassment, rest breaks, Working Time Regulations and earned leave.

ACAS Scotland  
151 West George Street  
Glasgow G2 2JJ  
Helpline: 0300 123 1100  
Website: [www.acas.org.uk](http://www.acas.org.uk)

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■ **Health and Safety Executive (HSE)**

Helpline: 0131 247 2121

Website: [www.hse.gov.uk/scotland](http://www.hse.gov.uk/scotland)

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■ **Employment Tribunals**

For information about making a claim or going to an Employment Tribunal.

Helpline: 0300 790 6234

Website: [www.gov.uk/courts-tribunals/employment-tribunal](http://www.gov.uk/courts-tribunals/employment-tribunal)

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■ **National Minimum Wage (NMW)**

Helpline: 0300 123 1100

Website: [www.gov.uk/pay-and-work-rights](http://www.gov.uk/pay-and-work-rights)

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■ **Citizens Advice**

Helpline: 0344 411 1444

Website: [www.cas.org.uk](http://www.cas.org.uk)

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■ **Human Trafficking and Anti Slavery**

Helpline number: 08000 121 700

Website: [www.modernslaveryhelpline.org](http://www.modernslaveryhelpline.org)

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■ **Law Society of Scotland**

Helpline: 0131 266 7411

Website: [www.lawscot.org.uk](http://www.lawscot.org.uk)

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■ **Gangmasters and Labour Abuse Authority**

Telephone: 0345 602 5020

Website: [www.gla.gov.uk](http://www.gla.gov.uk)

## CERTIFICATE OF ATTENDANCE

This is to certify that

.....

has completed training in

.....

Course Duration: 1 Day

Date: 6 July 2011

Instructor: Mr S White

Ref: HO27510



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 Government Wages Enforcement Team will always try to answer any questions.

## Control Test Inspections

- Scottish Government Agricultural Wages Inspectors will also carry out random 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.
- Where the Wages Enforcement Team considers that a worker has not received his/her full entitlement, the employer will be advised of the problem in writing and invited to remedy the position.
- The Wages Enforcement Team 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.
- 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 they are not being paid in accordance with the Order, then they should contact the Secretary, Scottish Agricultural Wages Board, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD, Tel No: 0131 244 9749. E-mail: sawb@gov.scot

## Complaint Procedures

- Complaints about the standard of service received from the Scottish Government Rural and Environment Directorate Agricultural Wages enforcement staff, should be directed initially to the Deputy Director, Agriculture and Rural Development Division, Spur D, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD.
- If having referred the matter to the Deputy Director, Agriculture and Rural Development Division you remain dissatisfied you may refer the matter to the Cabinet Secretary for Rural Affairs and the Environment, St Andrew's House, Regent Road, Edinburgh EH1 3DG.
- Where an employer or worker considers that there has been maladministration by Scottish Government staff in the handling of a routine inspection or complaint case, as opposed to the outcome of the case, they may refer the matter to the Scottish Public Services Ombudsman, 99 McDonald Road, Edinburgh EH7 4NS, Tel: Freephone 0800 377 7330. 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  
Mrs Afshan Rathore  
Ms Denise Kazmierczak  
John Connelly

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

Scott Walker	NFU Scotland, Rural Centre, West Mains
Gary Mitchell	Ingliston, Newbridge EH28 8LT
Jamie Smart	Tel No: 0131 472 4000
Peter Thomson	
Ms Tracy McCullagh	

Ms Jane Stuart-Smith	Scottish Land & Estates
	Stuart House, Eskmills Business Park
	Musselburgh EH21 7PB
	Tel No: 0131 653 5400

■ Employees' representative members nominated by Unite the Union:

Scott Foley	Edinburgh Office
Scot Walker	22 York Place
	Edinburgh EH1 3EP
	Tel No: 0131 556 9676

■ SAWB Secretary:

Ken Gray  
D Spur, Saughton House  
Broomhouse Drive  
Edinburgh EH11 3XD  
Tel No: 0131 244 9749  
E-mail: sawb@gov.scot

# Appendix 1

## Sample Time Sheets

### 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			Weekly Total (Hours:Minutes)
Mon			
Tue			
Wed			
Thu			
Fri			
Sat			
Sun			Weekly Total (Hours:Minutes)

## Time Sheet (Monthly)

Date	Time Worked	Daily Total (Hours:Minutes)	
Mon			
Tue			
Wed			
Thu			
Fri			Weekly Total (Hours:Minutes)
Sat			
Sun			
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 \_\_\_\_\_











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Riaghaltas na h-Alba  
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[www.gov.scot](http://www.gov.scot)

APS Group Scotland  
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