

The Agricultural Wages (Scotland)
Order (No. 66) 2019

Made 29th January 2019

Coming into force – 1st April 2019

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The Scottish Agricultural Wages Board, having given public notice of its proposed Order and of the manner in which, and the time within which, objections to it might be lodged and having considered objections to it, in exercise of the powers conferred on it by sections 3 and 7 of the Agricultural Wages (Scotland) Act 1949(a) and section 67 of the Agriculture Act 1967(b) and of all other powers enabling it in that behalf, hereby makes the following Order—

PART 1

GENERAL PROVISIONS

Citation and commencement

1. This Order may be cited as the Agricultural Wages (Scotland) Order (No. 66) 2019 and shall come into force on 1st April 2019.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“agricultural apprentice” means an agricultural worker who has entered into a contract of apprenticeship with an employer and in terms of that contract has undertaken to study a SCQF Level 5 Modern Apprenticeship in Agriculture; and/or an SCQF Level 4 or equivalent qualification;

“day” means a period of 24 hours commencing at 00:01 hours;

“holiday year” means a period of 12 months commencing on 1st January and ending on 31st December (both dates inclusive);

“the 1996 Act” means the Employment Rights Act 1996(c) as amended;

“stable income arrangement” means an arrangement between a worker and an employer to which Part 8 of the Order applies;

“week” means a period of 7 consecutive days commencing at 00:01 hours on Monday; and

“worker” means any worker other than any person of “school age” within the meaning of sections 31 and 33 of the Education (Scotland) Act 1980(d).

(2) **When specified in any formula set out in the Order—**

the letter “M” shall represent the minimum hourly rate payable to the worker in accordance with articles 5 or 6 (minimum hourly rates), and

the letter “P” shall represent the sum (if any) payable to the worker in accordance with article 7 (additional sum).

(3) A reference, in this Order, to continuous employment for a specified period shall be construed in accordance with Chapter I of Part XIV of the 1996 Act provided that in its application to this Order—

(a) the reference in section 210(4) of the 1996 Act, to “a week which does not count”, shall be substituted by a reference to “a period of 6 consecutive weeks which does not count”, and

(b) the definition of “week” in section 235(1) of the 1996 Act shall not apply;

and employment prior to the coming into force of the Order will count for the purpose of calculating a period of continuous employment.

(4) Where reference is made in this Order to a payment in respect of an hour, that reference shall include payment in respect of a part of an hour and the payment to be made in respect of that part of an hour shall be that proportion of the appropriate hourly rate as is represented by the proportion of that part of an hour to a whole hour.

(5) For the purposes of this Order a worker shall be entitled to be remunerated as appropriate in accordance with articles 5 to 7 for any hour—

(a) which they are contractually obliged to work and during which the employer has,

(a) 1949 c.30. as amended

(b) 1967 c.22. as amended

(c) 1996 c.18. as amended

(d) 1980 c.44. as amended

- for any reason, prevented the worker, who was available for work, from working,
- (b) spent travelling to and from a place of work, other than a place where the worker would ordinarily be expected to work, and
 - (c) spent travelling to or from, and attending, any course of work-related training for which the employer's approval has been obtained,

but shall not be entitled to be remunerated for any authorised tea or meal breaks.

(6) Any reference in this Order to a numbered article, paragraph or Part shall, unless the context otherwise requires, be construed as a reference to the article, paragraph or Part bearing that number in this Order.

Extent

3.—(1) Parts 1 to 8 of this Order shall apply to every worker employed in agriculture in Scotland.

(2) Minimum rates of pay fixed by this Order by reference to time work shall apply to workers employed on piece work.

Revocation

4. The Agricultural Wages (Scotland) Order (No. 65) 2018 (a) is revoked.

PART 2 MINIMUM WAGES

Minimum hourly rates

5. Subject to the following provisions of this Order, the minimum hourly rate of wages payable to a worker shall be the sum shown in Table 1.

TABLE 1
MINIMUM HOURLY RATES

<i>Minimum hourly rate 1 April 2019</i>	
All ages of worker	£8.21

(a) Order made 2018

Minimum hourly rates for agricultural apprentices

6. (a) Subject to the following provisions of this Order, the minimum hourly rate of wages payable to an agricultural apprentice who has been continuously employed by the same employer for up to 18 months shall be the sum shown in Table 2.
- (b) After a period of 18 months continuous employment with the same employer the minimum hourly rate of pay for an agricultural apprentice shall be the rate in Table 1 and more fully described in paragraph 5 above.

TABLE 2
MINIMUM HOURLY RATE
FOR AGRICULTURAL APPRENTICE

	<i>Minimum hourly rate 1 April 2019</i>
All ages of worker	£5.30

Additional sum

7. Where a worker to whom article 5 above applies holds either—
- (a) a Scottish or National Vocational Qualification in an agricultural subject at SCQF Level 6 or above, or
- (b) an apprenticeship certificate approved by Lantra, (formerly ATB Landbase), or a certificate of acquired experience issued by ATB Landbase
- they shall be paid, in addition to the sum specified in article 5, and in respect of each hour worked for which the worker is paid as specified in article 5, a sum no less than £1.25 from 1 April 2019.

PART 3 OVERTIME

Minimum hourly overtime rate – up to 26 weeks

8.—(1) Subject to the following provisions of this Order, a worker who has been continuously employed by the same employer for up to 26 weeks shall be paid wages in accordance with the provisions of this article in respect of any hour of overtime which they have worked.

(2) A worker to whom this article applies shall not be entitled to wages under articles 5, 6 or 9 or any additional sum under article 7 in respect of any hour of overtime which they have worked.

- (3) For the purposes of this article, an hour of overtime is any hour which the worker works
- (a) in excess of 8 hours on any day, or
- (b) in excess of 48 hours in any week (other than any hour falling within paragraph (a) above).

(4) The minimum hourly rate of wages payable to a worker to whom this article applies in respect of any hour of overtime which they have worked shall be calculated in accordance with the following formula—

$$M \times 1.5$$

Minimum hourly overtime rate – more than 26 weeks

9.—(1) Subject to the following provisions of this Order, a worker who has been continuously employed by the same employer for more than 26 weeks shall be paid wages in accordance with the provisions of this article in respect of any hour of overtime which they have worked.

(2) A worker to whom this article applies shall not be entitled to wages under articles 5, 6 or 8 or any additional sum under article 7 in respect of any hour of overtime which they have worked.

- (3) For the purposes of this article, an hour of overtime is any hour which the worker works
- (a) in excess of 8 hours on any day, or
 - (b) in excess of 39 hours in any week (other than any hour falling within paragraph (a) above).

(4) The minimum hourly rate of wages payable to a worker to whom this article applies in respect of any hour of overtime which they have worked shall be calculated in accordance with the following formula—

$$M \times 1.5$$

PART 4 HOLIDAYS

Minimum Holiday Entitlement

10.—(1) Subject to the following provisions of this Part a worker is entitled in each holiday year to a minimum holiday entitlement of not less than the amounts shown in Table 3 below.

TABLE 3
HOLIDAY ENTITLEMENT

<i>Column 1</i> <i>Number of days worked per week</i>	<i>Column 2</i> <i>Number of days of holiday entitlement for entire holiday year</i>
1	8
2	13
3	18
4	23
5	28
6	33
7	38

(2) Where a worker is contractually obliged to work a different number of days on different weeks, their contractual days of work for each week for the purposes of paragraph (1) shall be the average number of days they are contractually obliged to work during each period of 12 weeks; and that average number shall, where appropriate, be rounded to the nearest whole number, a half being rounded up to the next whole number.

(3) During the first year of their employment, the amount of days holiday a worker may take at any time in exercise of their entitlement under paragraph (1) is limited to the amount which is deemed to have accrued in their case at that time under paragraph (4), as modified under paragraph (5) in a case where that paragraph applies, less the amount of leave (if any) that they have already taken during that year.

(4) For the purposes of paragraph (3), holiday entitlement is deemed to accrue over the course of the worker's first year of employment, at the rate of one-twelfth of the amount specified in paragraph (1) on the first day of each month of that year.

(5) Where the amount of holiday entitlement that has accrued in a particular case includes a fraction of a day other than a half-day, the fraction shall be treated as a half-day if it is less than a half-day and as a whole day if it is more than a half-day.

(6) Where the date on which the worker's employment begins is later than the date on which their current holiday year begins, their holiday entitlement in that holiday year is a proportion of the period applicable under paragraph (1) equal to the proportion of the holiday year remaining on the date on which their employment begins.

(7) Where the holiday entitlement to which a worker is entitled is or includes a proportion of a week the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(8) Where the employer and the worker are unable to agree when a holiday to which the worker is entitled by virtue of this article is to be taken, the employer –

- (a) may give the worker 21 days notice of the time at which the holiday can be taken, and
- (b) shall allow a holiday to be taken not later than the termination of the worker's employment or the end of the holiday year whichever is earlier.

(9) In this article references to a worker's total holiday entitlement means any such entitlement in excess of any entitlement to any holidays accruing to such a worker by virtue of the Working Time Regulations 1998, as amended.

(10) Where a worker and their employer have agreed in advance that a day shall be a holiday under this article, but the employer requires the worker to work on that day–

- (a) for each hour worked on that day the worker shall be paid not less than a sum calculated in accordance with the following formula–

$$M \times 1.5,$$

subject to a minimum payment in respect of that day equivalent to the value calculated in accordance with that formula, of 4 hours work, and

- (b) that day shall not count as a holiday taken.

Special holidays

11.—(1) In addition to their minimum holiday entitlement calculated in accordance with article 10, a worker shall be allowed Christmas Day and New Year's Day, as holidays in each holiday year paid in accordance with articles 5 to 9.

(2) Where any of the days mentioned in paragraph (1) above falls on a day on which, in another week, the worker would not be contractually obliged to work, the next following contractual day of work shall be allowed as a holiday.

Bereavement leave

12.—(1) In addition to any other holiday entitlement under this Part, a worker shall be entitled to not less than 3 days paid absence at the time of a bereavement.

(2) For the purposes of paragraph (1) above–

“bereavement” means the death of a worker's child, parent, spouse or someone they live with as if they are married to them; “parent” includes step-parent, adoptive parent and any persons in the position of parent; and “child” includes step-child, adopted child or child in the household of the worker.

Minimum payment for holidays

13.—(1) A worker is entitled to be paid in respect of any period of leave to which they are entitled under article 10 above, at the rate of a week's pay in respect of each week of leave.

(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this article, subject to the modifications set out in paragraph (3).

(3) The provisions referred to in paragraph (2) shall apply–

- (a) as if references to the employee were references to the worker;
- (b) as if references to the employee's contract of employment were references to the worker's contract;
- (c) as if the calculation date were the first day of the period of leave in question; and
- (d) as if the references to sections 227 and 228 did not apply.

(4) Subject to paragraph (5) below, payment in respect of each day (or period of days) of holiday shall be made not later than the regular pay day immediately preceding the holiday.

(5) Payment in respect of each day (or period of days) of bereavement leave referred to in article 12 shall be made on the regular pay day following the bereavement leave taken.

Additional provision for special holidays

14.—Subject to the following provisions of the Order, where a worker is required by their employer to work on 25 December or 1 January they shall be paid, for each hour worked, no less than a sum calculated in accordance with the following formula—

$$(M + P) \times 3,$$

and where the day is a day on which, in another week, the worker would have been contractually obliged to work it shall count as a holiday taken.

Untaken holidays

15.—(1) (a) Where a worker's minimum holiday entitlement, in accordance with article 10, has not been taken by the end of the holiday year, they shall be paid no less than a sum calculated in accordance with article 13 above for each day not taken that is in excess of any entitlement to any holidays accruing to such a worker by virtue of the Working Time Regulations 1998.

(b) Payment of such a sum shall be made not later than the regular pay day next following 31 December.

(2) (a) Where a worker's minimum holiday entitlement, in accordance with article 10, has not been taken before the date of termination of their employment in a holiday year, they shall be paid no less than a sum calculated in accordance with article 13 above for each day not taken.

(b) Payment of such a sum shall be made within 7 days following the date of termination of employment.

PART 5

ABSENCES DUE TO ILL-HEALTH

Qualifying workers

16.—This Part applies to workers who have been continuously employed by the same employer for at least 52 weeks.

Qualifying days

17.—(1) Subject to the provisions of this Part, a worker shall be paid by their employer in accordance with this Part for each qualifying day up to a total, in any period of 52 weeks (including any week commencing before the coming into force of this Order), of the number of days calculated in accordance with the following formula—

$$13 \times D$$

where

D represents the worker's contractual days of work per week in accordance with article 10.

(2) Any payment in accordance with this Part will be taken to be in satisfaction of the employer's obligation to pay Statutory Sick Pay, within the meaning of the Social Security Contributions and Benefits Act 1992(a).

(a) 1992 c.4.

(3) In this Part, “qualifying day” means a day during which the worker is absent from work as a result of –

- (a) sickness or injury; or
- (b) any other medical condition which a registered medical practitioner has certified in writing renders it necessary that the worker be absent from work; or
- (c) a statement in writing by a registered medical practitioner to the effect that the worker should not work because of a contagious or infectious disease.
- (d) And in the case of either (a), (b) or (c)–
 - (i) the day is not one of the first 3 days of a period of absence,
 - (ii) the absence is not one in respect of which statutory maternity pay, within the meaning of the Social Security Contributions and Benefits Act 1992, is payable,
 - (iii) the day is not a holiday remunerated in accordance with Part 4,
 - (iv) the worker is not in legal custody, and
 - (v) the absence does not arise from intentional self-inflicted injury or the consumption of alcohol or a controlled drug (within the meaning of the Misuse of Drugs Act 1971 (b)).

Payment for qualifying days

18.—Subject to the following provisions of this Order, for each qualifying day, a worker shall be paid no less than a sum calculated in accordance with the following formula–

$$\frac{(M + P) \times C}{D}$$

where

C represents the worker’s contractual hours of work per week or 39 hours, whichever is the lower, and

D represents the worker’s contractual days of work per week in accordance with article 10.

Conditions of payment

19.—(1) A worker shall not be entitled to be paid in accordance with article 18 unless–

- (a) they have notified their employer within 24 hours from the usual starting time on the first day of absence of the fact of, and reasons for, their absence,
- (b) they provide, within 24 hours of a written request by their employer to do so, a written statement signed by them stating the reason for their absence,
- (c) for periods of sickness under article 17(3)(b) or (c) above, they provide to their employer, within 24 hours from the usual starting time on the first day of absence, the appropriate certificate or statement,
- (d) for periods of sickness under article 17(3)(a) above lasting 4, 5 or 6 days, they provide to their employer either–
 - (i) a written statement signed by them stating the reason for their absence
 - (ii) a medical certificate advising them to refrain from work due to sickness or injury
 - (iii) a certificate of admission to hospital,
- (e) for periods of sickness under article 17(3)(a) above of 7 days or more, they provide to their employer either–
 - (i) a medical certificate advising them to refrain from work due to sickness or injury, or
 - (ii) a certificate of admission to hospital.

(2) For the purpose of paragraph (1)(d) and (e) above, the period of an absence shall not include a day–

- (a) on which the worker is not contractually obliged to work, or
- (b) which is a holiday in accordance with article 11.

(b) 1971 c.38.

PART 6

BENEFITS

Scope of provision

20.—(1) Only the benefits specified in this Part may be reckoned as payment of wages in lieu of payment in cash for the purpose of establishing whether a worker has been paid the minimum rate of wages applicable to them in accordance with this Order.

(2) Only the value specified in this Part in relation to such a benefit may be reckoned for the purpose mentioned in paragraph (1) above.

(3) Where the value of a benefit is expressed as a weekly amount, it may be applied to the wages of the worker for the week in respect of which the benefit was enjoyed or, where the wages for that week are insufficient to meet all or any part of that value, may be applied in whole or in part in any subsequent week.

Benefits

21.—(1) Subject to paragraph (2) below

(a) the provision without charge by an employer to a worker of a house shall be a benefit for the purposes of this Part and the value of that provision shall be £1 per week.

(b) any deduction an employer makes from a worker's wage in respect of accommodation other than a house shall not exceed £7.55 for each day in the week for which living accommodation is provided.

(2) Where a local authority is satisfied that accommodation of a kind specified in paragraph (1) above is unfit for human habitation and a notice has been served in terms of sections 108(1), or an order made under section 114 or 115, of the Housing (Scotland) Act 1987(a), or a notice served in terms of section 30 of the Housing (Scotland) Act 2006(b) in respect of that accommodation, the benefit of its provision shall have no value for the purposes of this Part from the date on which such a notice is served or order made until the date on which the house has been rendered fit for human habitation to the satisfaction of the local authority.

PART 7

MISCELLANEOUS CONDITIONS

Standby duty

22.—(1) A worker who is on standby duty shall, without prejudice to the application of any other provision of this Order, be paid 2 hours of pay at the appropriate rate specified at articles 5 or 6.

(2) For the purpose of this article standby duty occurs when an employer agrees with a worker that the worker will be contactable by a method agreed between the employer and worker, and able to reach the place where they may be required to work within a given time agreed between the employer and worker so as to be available for work or when a worker is required by their employer to wait at or near home for the employer to decide if the worker is needed or for any other purpose specified by the employer on a day—

- (a) for each period of standby duty beginning at the beginning of a non-contracted day and ending at the beginning of the following non-contracted day.
- (b) for each period of standby duty beginning at the beginning of a non-contracted day and ending at the beginning of the following contracted day.

(3) Where a worker, who has been on standby duty on a day on which they are not contractually obliged to work, is called upon by their employer to work on that day, the minimum hourly rate of wages payable to them for each hour so worked shall be calculated, as appropriate, in accordance with the formulae set out in articles 8, 9, 10(10) or 14.

(a) 1987 c.26.
(b) 2006 aspl.

Pension contributions

23.—The Employer will comply with the employer pension duties in respect of the Employee in accordance with Part 1 of the Pensions Act 2008.

Training in health and safety matters

24.—(1) A worker who is in continuous employment with the same employer shall, during each holiday year be entitled, and may be obliged by their employer, to attend for training on subjects related to their employment and which have a special emphasis on health and safety at work.

(2) The period of training which a worker is entitled, or may be obliged, to attend under this article may be undertaken in one or a number of courses throughout the holiday year, extending in total to 2 days.

(3) Where, in the course of any holiday year a worker is unable to attend for training by reason of injury or ill health or any absence authorised by the employer, the worker may exercise that entitlement, or be required to attend, within the first 4 months of the following holiday year.

Expenses of attendance

25.—(1) The cost of any training course of the kind specified in article 24 shall be borne by the employer.

(2) The employer shall reimburse the worker's reasonable travel, subsistence and board and lodging expenses necessarily incurred in attending such a course.

Dog allowance

26.—(1) Where a worker is required for the performance of their duties to keep and feed a dog, their employer shall reimburse their costs by the payment to them of an allowance of no less than £6.24 per week.

(2) The allowance referred to in paragraph (1) above shall be payable for each of up to 4 dogs.

Weather protective clothing

27.—(1) A worker shall be provided, by their employer, with such of the following items of weather protective clothing as may be necessary for the proper performance of their duties-

- (a) Wellington boots;
- (b) PVC coat;
- (c) PVC leggings;
- (d) PVC gloves.

(2) Subject to paragraph (3) below, weather protective clothing provided in accordance with paragraph (1) above shall be kept in good repair, and replaced where incapable of repair and no longer fit for its purpose, by, and at the expense of, the employer.

(3) Weather protective clothing lost or damaged as a result of the fault or negligence of the worker to whom it was provided shall be repaired or replaced at the expense of that worker.

Time sheets

28.—(1) Subject to paragraph (2) below, every worker to whom this Order applies shall be provided by their employer with time sheets on which the worker shall record their daily hours of work or other activity in respect of which payment at a minimum rate under this Order requires to be made.

(2) This article shall not apply to an employer who operates an automatic system to record the working hours of their workers.

(3) Time sheets which have been completed and tendered by a worker to their employer shall be retained by the employer for 3 years.

Payment of wages

29. All wages payable to a worker in respect of any day in accordance with articles 5 to 9 shall be paid to them on the contractual pay day referable to that day.

PART 8

MINIMUM WAGES FOR WORKERS EMPLOYED UNDER A STABLE INCOME ARRANGEMENT

Application of Part 8

30.—(1) This Part applies in relation to the employment of a worker employed on the basis of a stable income arrangement.

(2) In this Part of this Order, unless the context otherwise requires—

“pay period” means the daily, weekly, monthly or other period of time within the time covered by the stable income arrangement over which wages will accrue under the contract of employment, and at the end of which such wages shall become payable to the worker;

“plain time rate” means the rate of wage per hour payable under the contract of employment in respect of any hour for which wages are payable, other than overtime hours;

“overtime rate” means the rate of wage per hour payable under the contract of employment in respect of any hour for which wages are payable as overtime hours.

Work under a stable income arrangement

31.—(1) A worker is employed on the basis of a stable income arrangement where

- (a) the worker’s contract of employment satisfies the provisions of paragraph (2) below,
- (b) the employer and the worker comply with the provisions of paragraph (3) below, and
- (c) the employer and the worker agree in writing at the commencement of the contract that the provisions of this part shall apply.

(2) The employment is regulated by a contract of employment which

- (a) is in writing;
- (b) specifies the period to be covered by the stable income arrangement;
- (c) specifies the total number of hours to be worked in respect of the period of the stable income arrangement at the plain time rate and separately at the overtime rate;
- (d) specifies the total number of hours to be worked in respect of any pay period at the plain time rate and separately at the overtime rate, and the distribution of those hours throughout that pay period;
- (e) specifies the plain time rate and the overtime rate;
- (f) specifies the wages, including wages at the overtime rate, payable in respect of—
 - (i) the period of the stable income arrangement, and
 - (ii) any pay period;
- (g) specifies the number of pay periods occurring within the period covered by the stable income arrangement;
- (h) contains provision for hours worked to be recorded in accordance with article 28.

(3) The employer shall maintain records of all time worked by that worker for the purposes of article 28 and showing any time in respect of which any overtime rate of pay is payable to the worker.

Minimum wages

32.—(1) The plain time rate paid to a worker employed on the basis of a stable income arrangement shall be not less than the minimum hourly rate of wages to which the worker would be entitled as specified in Part 2.

(2) The overtime rate paid to a worker employed on the basis of a stable income arrangement shall be not less than the minimum hourly overtime rate of wages to which the worker would be entitled as specified in Part 3.

End of employment

33.—If a worker leaves their employment before the end of the agreement period they shall be paid for any hours which they have worked in excess of the hours for which they have been paid.

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29 January 2019

Ken Gray
Secretary

