

AGRICULTURAL SECTOR (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5 - Enforcement of minimum rates

18. This section creates the enforcement regime for the provisions contained in agricultural wages orders which relate to the minimum rates of pay which agricultural workers must receive. It does so primarily by applying (with some modifications) the regime set up by the National Minimum Wage Act 1998 (“the 1998 Act”) for enforcing compliance with the national minimum wage.
19. There are several aspects to this enforcement regime.

Records

20. The application of sections 10 and 11 of the 1998 Act confer upon agricultural workers the right to inspect their employers’ records to ensure they are being paid at least the minimum rate that applies to them by virtue of an agricultural wages order. The worker can only do so if the worker has reasonable grounds to suspect that he or she is not being paid the correct amount. The worker must follow the procedure set out in section 10 of the 1998 Act (as applied by this Act) to be able to access the records.
21. Where an employer does not allow the worker access to the records, the worker may complain to an employment tribunal. If the employment tribunal finds the complaint well-founded, it must make a declaration to that effect and award the worker a financial sum.

Powers of officers

22. The application of section 14 of the 1998 Act confers powers on the officers appointed by the Welsh Ministers (see section 8 of this Act below) to ensure compliance with the enforcement regime. In particular, the officers have a range of investigative powers to require the production of information and records.
23. It is an offence (by virtue of the application of section 31(5) of the 1998 Act), for a person to delay or obstruct an officer from carrying out his or her duties. It is also an offence for a person to refuse to answer an officer’s questions or to supply information that the officer is entitled to require the person to provide.

Entitlement to additional remuneration in the event of underpayment

24. The application of section 17 of the 1998 Act means that, where an agricultural worker is paid at a rate below the minimum rate which that the worker is entitled to receive by virtue of the Act, then the worker becomes entitled to additional remuneration for the period which the worker was underpaid.
25. The additional remuneration to which the worker is entitled is calculated on a different basis from that in the 1998 Act by virtue of modifications in section 5(6) of this Act. The worker is entitled to the higher of either:

These notes refer to the Agricultural Sector (Wales) Act 2014 (c.6) which received Royal Assent on 30 July 2014

- the difference between what the worker was paid and what the worker should have been paid, or
- the amount worked out in accordance with the formula set out in section 5(6)(b) of this Act which is substituted for section 17(4) of the 1998 Act.

Notices of underpayment

26. The application of sections 19, 19C, 19D, 19F, 19G and 19H of the 1998 Act provide the mechanism for enforcement officers to serve notices on employers who, in the opinion of the officer, may have underpaid a worker or workers. The notice requires the employer to pay the sum due to the worker (calculated in accordance with section 17 of the 1998 Act, as applied by this Act) within 28 days of being served with a notice.
27. An employer who has been served with a notice of underpayment can appeal to an employment tribunal.
28. If a notice is not complied with (completely or otherwise), an officer can make a complaint on behalf of the worker to an employment rights tribunal.
29. Unlike the 1998 Act, this Act does not provide for the imposition of financial penalties (over and above an additional remuneration due) on employers.

Right not to suffer detriment

30. The application of sections 23 and 24 of the 1998 Act confer a right on a worker not to suffer detriment by his employer for:
 - the worker enforcing rights under this Act (or having such rights being enforced on the worker's behalf),
 - the worker's employer being prosecuted under this Act, or
 - the worker being or becoming (or potentially being or becoming) entitled to be paid a minimum rate of remuneration in accordance with this Act.
31. Where an employer does subject the worker to detriment as a result of enforcing the worker's rights, the worker can make a complaint to an employment tribunal.

Offences

32. The application of sections 31 to 33 of the 1998 Act provide for the offences in relation to:
 - failure to pay to an agricultural worker the minimum rate to which that worker is entitled;
 - failure to keep and preserve the records that an employer is required to keep by virtue of regulations made under section 7 of this Act;
 - making, having made or allowing to be made false entries in those records;
 - producing information or records which the person producing them knows to contain information which is false in a material particular;
 - delaying or obstructing officers in the carrying out of their duties or refusing to answer officers' questions or to provide officers with relevant information or records.

The penalty for these offences is an unlimited fine.

33. An enforcement officer may, if authorised by the Welsh Ministers, conduct the proceedings for an offence before a magistrate's court.

Restrictions on contracting out

34. The application of section 49 of the 1998 Act prevents agricultural workers and their employers from agreeing to a contract which would circumvent the minimum terms and conditions contained in an agricultural wages order.
35. This does not apply in relation to agreements entered into in relation to certain agreements prepared in order to resolve or avoid employment tribunal proceedings.

Unfair dismissal

36. Section 5(8) of this Act provides that an agricultural worker is to be regarded as having been unfairly dismissed if the reason (or the main reason) for the worker's dismissal relates to:
 - the worker enforcing their rights under this Act,
 - the worker's employer being prosecuted under this Act, or
 - the worker being or becoming (or potentially being or becoming) entitled to be paid a minimum rate of remuneration in accordance with this Act.