



# Traineeships update March 2024

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## 1. Background

Finding training routes into agroecological training can be a challenge, with few formal courses offering accessible training that properly equips participants for the challenges of working on and/or running an agroecological farm. At the same time, many experienced farmers running their own businesses lack sufficient income to pay trainees at minimum wage, but do have valuable skills that they are able to share in exchange for work. In this context many informal on-farm “traineeships” have developed in which there is an exchange of work for training, accommodation, food and sometimes a stipend. Whilst this has been a valuable route into land work for many, it has also led to exploitative situations and there have been increasing questions over legal issues around “traineeships.”

## 2. How the law is changing

Farms that have wanted to offer work-based training opportunities but were not in a financial position to pay trainees may have previously done so under the ‘family member exemption’: *‘Employees do not have to be paid the National Minimum Wage if they live in the employer’s household and are treated as a family member. For example, if the employer provides accommodation and food free of charge.’*<sup>1</sup>

This exemption<sup>2</sup> to National Minimum Wage (NMW) legislation, was designed with au pairs and other domestic workers in mind, but may have provided a route for training on farms. However, it has led to exploitation in both farm and household contexts. It has also been found to be discriminatory because domestic workers are significantly more likely to be female. **This exemption will therefore be removed by the government from 1 April 2024.** LWA has also received differing legal advice as to whether this exemption was ever applicable to trainees living on farms.

In light of this, in many cases a trainee could be classed as a ‘worker’ entitled to NMW and so farms should review their training arrangements. The changes do not affect the NMW exemption for members of a farmer’s family.

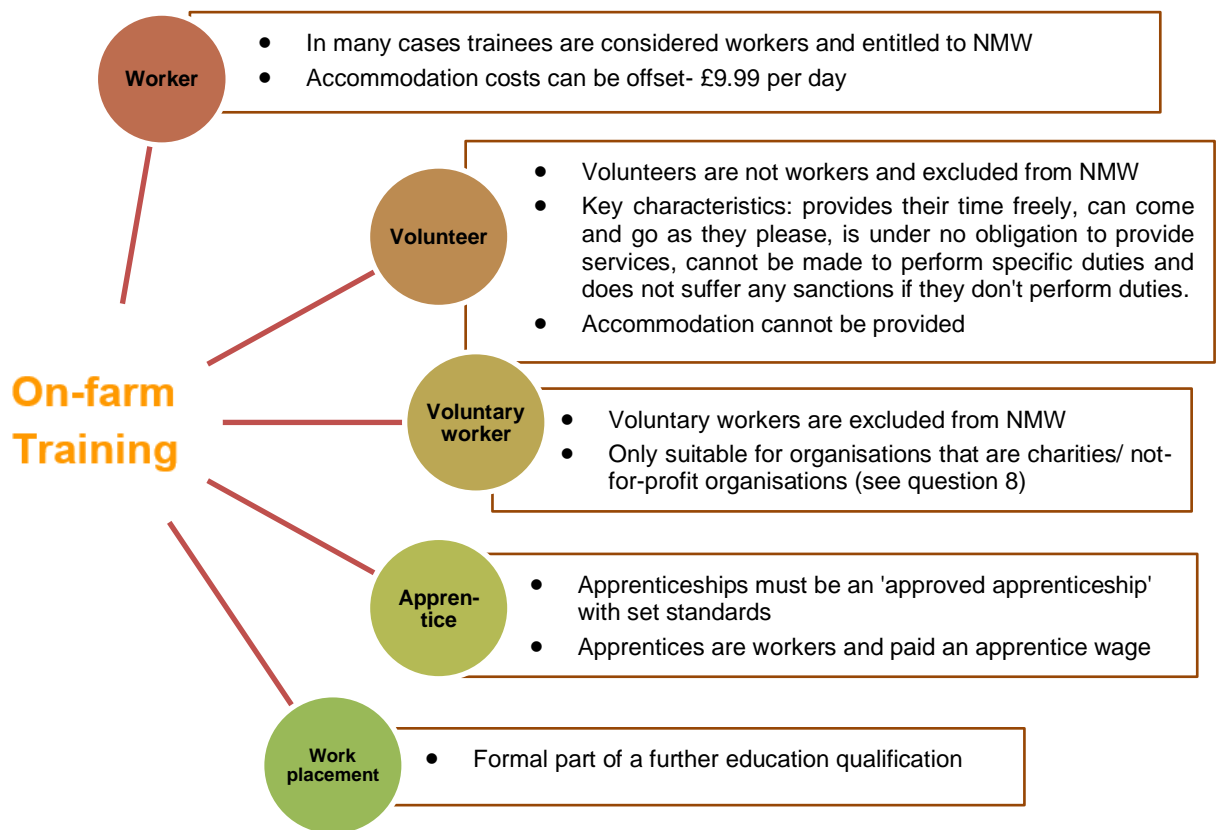
## 3. Summary

The information in this document is what the LWA has gathered from reading the current laws, and from in-depth consultations with an employment solicitor. This guidance provides an overview of the legal frameworks for farms that would like to deliver on-farm training, but does not constitute legal advice on any specific case. We recommend that you read the information in each section carefully; however, below is a summary of the different categories a trainee may fall into to help inform how to structure on-farm training:

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<sup>1</sup><https://www.fsp-law.com/not-so-equal-national-minimum-wage-exemption-to-be-removed>

<sup>2</sup><https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm05180>



#### 4. Who is considered a worker?

A person is generally classed as a 'worker'<sup>3</sup> if:

- they have a contract or other arrangement to do work or services personally for a reward (a contract can be written or unwritten)
- their reward is for money or a benefit in kind, for example the promise of a contract, training over and above that which is necessary for the job, future work or accommodation
- they only have a limited right to send someone else to do the work (subcontract)
- their employer has to have work for them to do as long as the contract or arrangement lasts
- they are not doing the work as part of their own limited company or as a sole trader in an arrangement where the 'employer' is actually a customer or client (i.e. self-employment).

Workers are entitled to National Minimum Wage (NMW) which from 1 April 2024 is set at £11.44 for those aged 21 and over.<sup>4</sup> Lower rates apply for younger workers.

The Gov.uk website has a useful NMW calculator available which takes account of accommodation, training and other deductions.<sup>5</sup>

For agricultural workers wages are set as follows:

- In England agricultural workers are treated the same as any other worker for NMW purposes
- In Northern Ireland the Agricultural Wages Board for Northern Ireland sets the wage rates which are applicable on 1 April each year.<sup>6</sup>

<sup>3</sup> <https://www.gov.uk/employment-status/worker>

<sup>4</sup> See NMW rates here: <https://www.gov.uk/national-minimum-wage-rates>

<sup>5</sup> [National Minimum Wage and Living Wage calculator for workers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/national-minimum-wage-and-living-wage-calculator-for-workers)

<sup>6</sup> <https://www.daera-ni.gov.uk/publications/awb-legislation-orders>

- In Scotland the Scottish Agricultural Wages Board sets the wage rates. The latest was published in March 2024 and will take effect from 1 April 2024.<sup>7</sup>
- In Wales the Agricultural Advisory Panel for Wales sets the terms and conditions of agricultural workers including agricultural wages orders. The latest was published in March 2024 and will take effect from 1 April 2024.<sup>8</sup>

### 5. Can training costs be deducted from a worker's wages?

Training costs can be deducted from a worker's wages provided there is an agreement to do this. However, if the training is a mandatory part of the placement, the deduction or payment of the training costs would reduce the earnings for NMW purposes. Therefore, a farm would need to increase the wages to ensure that the worker received the applicable NMW rate after the deduction was made. Mandatory training is training that the worker must do in order to carry out the work properly and safely e.g. health and safety training.

For information about training volunteers, see below section 7.5.

### 6. Can accommodation costs be deducted from a worker's wages?

- Where accommodation is provided as a benefit in kind (i.e. without charge), a set rate for the "accommodation offset" (see below) can be added to the total remuneration when calculating pay from NMW purposes.
- Where accommodation is provided as a benefit in kind but the worker pays rent to the employer (whether paid or deducted from a workers' wages, and regardless of whether it is at a reduced rate) any rent up to the value of the accommodation offset can be disregarded, but any excess will be treated as a deduction to reduce the pay for NMW purposes.
- Any charges that the worker must pay as a condition of being provided with the property must be taken into account when calculating NMW (e.g. payments for utilities). Therefore, if the wage minus the required payment for utilities brings the worker below minimum wage, this would be prohibited.
- Accommodation is 'provided by' the employer where it is provided in connection with the employment, where the employer owns or rents the property that the individual lives in even if there is no link between the job and the accommodation, or where the employer receives a payment or benefit from the landlord or member of the landlord's family. The employer may, therefore, be considered to be providing accommodation even where it doesn't own the property occupied by the worker or where the letting of a property is entirely separate to the working arrangement.
- The accommodation offset from 1 April 2024 is £9.99 per day or £69.93 per week. If accommodation was provided free of charge, this would reduce the minimum payment to the worker for an 8-hour day at NMW rates from £91.52 per day to £81.53 per day.<sup>9</sup>

### 7. Can trainees be considered volunteers?

There are very limited circumstances when a trainee could be considered a volunteer. There is also a distinction between 'volunteers' and 'voluntary workers':

<sup>7</sup><https://www.nfus.org.uk/policy/scottish-agricultural-wages.aspx>

<sup>8</sup><https://www.gov.wales/agricultural-wages-minimum-rates-pay>

<sup>9</sup> Calculates using NMW rates and accommodation offset rates from 1 April 2024:

<https://www.gov.uk/national-minimum-wage-accommodation>

**Volunteers** will only be entitled to NMW if they are workers. They will not fall within the definition of worker if they have no form of contract of employment (whether written or verbal) or contract to perform work or provide services and receive no financial remuneration or benefits in kind for providing their services.

**Voluntary workers** are specifically excluded from the NMW. They are a worker and have a contract but do not qualify for NMW provided they meet certain criteria (see 7.3 below).

### 7.1 Volunteers

The gov.uk guidance<sup>10</sup> on NMW states that a volunteer:

- provides their time and effort completely freely
- can come and go as they please
- Are under no obligation to provide their services
- Do not suffer any sanctions if they do not perform their volunteer duties

It is possible to have a volunteer agreement with volunteers which is intended to clarify reasonable expectations of the volunteer/the farm (e.g. provides an outline of the ethos, attendance expectations, role, rules and procedures etc.) **but this must not stray into being a worker agreement.**

#### *Case examples*

- 1) Murray v Newham Citizens Advice Bureau – The Employment Appeal Tribunal (EAT) held that the volunteer agreement in which Mr Murray agreed to volunteer at specific times and for a minimum period and the CAB agreed to repay his expenses and provide him with basic training amounted to a binding employment contract.
- 2) South East Sheffield Citizens Advice Bureau v Grayson – The EAT held that the volunteer was not employed. The key elements of the relationship which led to this conclusion were that the document stated that it was "to clarify the reasonable expectations" of the parties, was not signed, stated a "usual minimum commitment" and did not impose a contractual obligation on the CAB to provide work and the volunteer to carry it out.

### 7.2 Volunteer expenses

In order to ensure that a volunteer does not become a worker, expenses and benefits should be limited to:

- Reimbursement of reasonable out-of-pocket expenses. Receipts and records of money paid should be kept to demonstrate that payments relate only to expenses.
- Rewards and gifts should only be given where there is no obligation to do so, they are not given regularly, and they are of small value.
- Uniform and equipment should only be provided where it is reasonable and required to perform the role.
- Food and drink can be provided if it is reasonable in the circumstances.
- Accommodation cannot be provided to volunteers.

Given that on-farm training often provides accommodation as part of an exchange for training, in this instance trainees would be considered workers, not volunteers and therefore entitled to NMW. This should also be considered for residential/ long-term volunteer arrangements on farms, as providing accommodation could mean they are classed as workers.

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<sup>10</sup> <https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm05080>

### 7.3 Voluntary workers

Voluntary workers are specifically excluded from the NMW if the following conditions are met:

- They work for a charity, voluntary organisation, associated fund-raising body or a statutory body (see question 8 for detail on which organisations are eligible to take on voluntary workers)
- They receive no monetary payment other than:
  - (a) Reimbursement of expenses actually incurred or reasonably estimated to be incurred in the performance of their duties and
  - (b) Reimbursement of expenses to enable the voluntary worker to perform their duties where they are necessary and reasonably incurred
- They receive no benefit in kind other than reasonable subsistence or accommodation.

### 7.4 Voluntary worker expenses

Expenses can cover:

- Expenses incurred in the performance of a worker's duties such as travel from one site to another while performing duties, being sent to purchase something as part of the duties or paying for a hotel whilst performing duties at a conference (gov.uk NMW guidance examples).
- Expenses incurred to enable the duties to be performed provided these are necessary and reasonably incurred. This could include the costs of care for dependants needed for the voluntary worker to do the work, expenses to cover the cost of lunch during a break, expenses to cover travel to and from the voluntary work.
- Expenses cannot cover rent.
- Accommodation can be provided if it is reasonable in the circumstances of their volunteer role. If an individual was living with a family on a farm for example, this is likely to be reasonable.
- Subsistence (food, drink, laundry, basic toiletries, medicine, heating, lighting and other basic day to day needs) can be provided to a voluntary worker provided it is reasonable in the circumstances of their engagement.
- Subsistence payments cannot be provided where the individual is engaged directly by the charity or voluntary organisation, but may be provided by a third party charity or voluntary organisation which is engaged by the other.

### 7.5 Training for volunteers & voluntary workers

Training is a benefit in kind unless the training is:

- necessary to perform the duties of the voluntary worker
- for the sole or main purpose of improving the voluntary worker's ability to do the work; and
- necessarily acquired in the course of the voluntary work.

Training over and above this would likely result in the person being considered to be a worker for NMW purposes. The reason is that the provision of training beyond the needs of the volunteering opportunity would represent a benefit in kind.

If a farm delivers on-farm training to a volunteer or voluntary worker, it is important that all the training is directly related to the role. If there are other training opportunities that the farm would like to offer that aren't directly related to their tasks, these should be offered as an optional training for the trainee to attend and paid for by the trainee.

### 7.6 Penalties and fines

If volunteers or voluntary workers are classified incorrectly and are, in fact, workers this could result in significant liabilities for the farms including pay at NMW, employer's National Insurance Contributions, holiday pay, penalties imposed by HMRC and the farm could be 'named and shamed'.

A Notice of Underpayment (NoU) can be issued to an employer, requiring them to pay to the worker the amount of arrears outstanding, usually alongside a penalty. From 1 April 2016, penalties have been 200% of the total underpayment for all workers specified in the NoU. This is subject to a minimum penalty of £100 and a maximum penalty of £20,000 per worker. The penalty is reduced by 50% if all the unpaid wages and 50% of the penalty are paid in full within 14 days.

There is scope for HMRC to bring criminal proceedings against employers where they have refused or wilfully neglected to pay NMW, refused or wilfully neglected to answer questions or produce documents or produces false information in NMW records. These offences are punishable by a fine of up to £5,000 in the majority of cases.

## 8. What organisations can take on trainees as voluntary workers?

In order to meet the definition of a voluntary worker, the organisation must be<sup>11</sup>:

1. **A charity** – a body or trustees of a trust established for charitable purposes only. This would be charities registered with the Charity Commission.
2. **A voluntary organisation** – a body or trustees of a trust which is established only for charitable purposes (whether or not the purpose is charitable by law), benevolent purposes or philanthropic purposes, such as a community group. This would include community benefit societies and community interest companies. For cooperative societies and companies limited by guarantee that have a social purpose, this would depend on the details in each case. However, the broad principle is that the organisation should be established only for charitable, benevolent or philanthropic purposes; it should not distribute profit to individuals and should have an asset lock meaning that if the organisation is wound up, its assets go to another organisation with similar aims, rather than to the members of the organisation.
3. **An associated fundraising body** – a body where the profits are applied wholly for the purposes of a charity or voluntary organisation (e.g. a charity shop).
4. **A statutory body** – a body set up by an Act of Parliament such as schools, hospitals and bodies such as English Heritage.
5. **Religious and similar charitable communities** (provided they are employed by the community).

## 9. Can farms deliver on-farm training through an apprenticeship?

The Apprenticeship system is structured slightly differently in England, Scotland, Wales and Northern Ireland. However, all apprenticeships must be an 'approved apprenticeship' meaning that they take place under an approved apprenticeship agreement on an approved standard. This means that there must be a standard for particular sectors of work setting out the outcomes that the apprentice is expected to achieve, and the formal and informal training must meet this standard. Employers need to work through a registered training provider to deliver apprenticeships.

### Apprentice wages<sup>12</sup>

Apprentices are entitled to the apprentice rate (£6.40 as of 1st April 2024) if they're either:

- aged under 19; or

<sup>11</sup> <https://www.legislation.gov.uk/ukpga/1998/39/section/44>

<sup>12</sup> <https://www.gov.uk/national-minimum-wage-rates>

- aged 19 or over and in the first year of their apprenticeship

Apprentices are entitled to the minimum wage (£11.44 as of 1 April 2024) if they both:

- are aged 19 or over; and
- have completed the first year of their apprenticeship

Apprentice wages are the same across England, Northern Ireland, Scotland and Wales.

### **10. Can farms deliver on-farm training as an internship?**

Farms can deliver ‘internships’ or ‘work experience’ where individuals have an opportunity to learn about the working environment, carry out tasks and learn from a supervisor. However, it should be noted that there is no specific NMW exemption for interns so they will be entitled to be paid the NMW (and other employment rights) if they are workers. Calling an individual an "unpaid intern" or "expenses only intern" does not prevent them from qualifying for the NMW where they are a worker in reality. Interns can be volunteers, workers or employees depending on their working arrangements.

Work shadowing, which does not involve any work being performed, will not qualify for the NMW. However, this is unlikely to be practical for on-farm training, as trainees will need to perform work tasks in order to learn.

### **11. Can farms deliver on-farm training as a work placement?**

On-farm training can be delivered as part of a work placement as a formal part of a further or higher education qualification (e.g. a sandwich placement). Students working as a required part of a UK-based further or higher education course don't qualify for the minimum wage if their placement does not exceed 1 year.

### **12. How is LWA supporting on-farm training?**

The LWA is advocating and lobbying for a fairer food system where all workers- trainees or otherwise- can be paid a fair wage for their labour. Equally, we recognise that “traineeships” are currently an important entry route for many landworkers. We therefore see ourselves as having a key role to play in helping members who offer training to deliver quality training whilst also supporting the wellbeing and learning experience of learners and enabling learners to access mutual support from across the wider movement.

Here are ways that we are currently supporting LWA members to deliver effective training and also develop alternatives:

- Working with partners to investigate how to increase coverage of accredited training and apprenticeship offerings and how to make these routes accessible and viable options for learners and farms wishing to offer training.
- Working with partners to create supplementary and wrap around content for apprenticeships and accredited training courses, helping to make them more suitable for agroecological learners.
- Connecting trainers for peer to peer support – to join this network please email Ariana (England and Wales) [ariana.chamberlain@landworkersalliance.org.uk](mailto:ariana.chamberlain@landworkersalliance.org.uk) or Clem (Scotland) [clem.sandison@landworkersalliance.org.uk](mailto:clem.sandison@landworkersalliance.org.uk)
- Engaging with new entrant landworkers to share relevant resources and opportunities and to invite input to our work around advocacy and policy
- Mapping career pathways for different sectors, to demystify these for new entrants.



- Developing a programme of “train the trainer” sessions to equip LWA members with the skills to be effective trainers
- Campaigning for policies that support the economic viability of agroecological farms so that they are then able to pay fair wages