WEEKLY LABOUR BULLETIN

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27th October 2026

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CAN A CASH ALLOWANCE BE REPLACED WITH AN IN-KIND BENEFIT?

PART 2: THE EXEMPTION PROCESS — WHAT MUST A FARMER DO?

INTRODUCTION

In Part 1, we established that a farmer cannot simply replace an allowance prescribed by S.I. 41 of 2022 with an in-kind benefit and stop paying the allowance. Where the proposed arrangement requires a departure from the CBA, section 29 provides the exemption mechanism that the employer should pursue. Part 2 looks at how to go about the exemption process in this situation.

WHAT DOES SECTION 29 PROVIDE?

Section 29 of S.I. 41 of 2022 provides that the Exemption Committee of the National Employment Council for the Agricultural Industry may, at its discretion, grant an exemption in writing from any provision of the Agreement, on reasonable grounds and subject to such terms and conditions as it may determine. There are three important points for farmers:

- **There must be reasonable grounds:** The employer should explain why the alternative arrangement is being proposed and why an exemption should be considered.
- **Approval is not automatic:** The Committee has discretion to grant or refuse the application.
- **The exemption must be in writing:** An application, an employee's agreement or an informal discussion with the NEC does not, by itself, constitute an exemption.

WHAT SHOULD A FARMER CONSIDER BEFORE APPLYING?

Before approaching the NEC, the farmer should carefully consider the proposed arrangement and prepare the relevant information. This should include:

- **The allowance concerned**: Identify the specific allowance payable under the CBA and the employees entitled to receive it.
- **The proposed alternative:** Explain exactly what the employer intends to provide in place of the cash allowance.
- **The justification:** Explain why the alternative is being proposed and why the employer believes it is appropriate.

- **The value and adequacy of the benefit:** Demonstrate how the proposed benefit will meet the purpose of the allowance and provide a genuine benefit to the employee. This emanates from section 12A (2) (b) of the Labour Act.
- **The practical arrangements:** Explain who will pay for installation, operation, maintenance, repairs and replacement, where applicable, and what will happen if the benefit becomes unavailable or inadequate.

The employer should be able to demonstrate that the proposal is practical, clearly defined and capable of being implemented fairly.

WHAT IS THE ROLE OF AN EMPLOYEE AGREEMENT?

The employer should discuss the proposed arrangement with the affected employee or employees before submitting the application. The employee should understand what is being offered, how it will operate and how it differs from the existing cash allowance. Where the employee agrees, the agreement should be recorded in writing and may be submitted in support of the application. However, employee consent does not replace the exemption required under section 29. The Committee must still consider the application and make its own decision.

If an employee does not agree, the employer should record the employee's concerns honestly. Section 29 does not expressly make employee consent a prerequisite for an application, but the absence of agreement may be relevant to the circumstances and the proposed arrangement.

WHAT HAPPENS WHILE THE APPLICATION IS BEING CONSIDERED?

The farmer should continue complying with the existing CBA entitlement. Submitting an application does not suspend the employer's obligation to pay the prescribed allowance. The employer should not stop paying the allowance merely because an application has been lodged or because the employee has agreed to the proposal. The employer should await the Committee's written decision.

WHAT HAPPENS IF THE EXEMPTION IS GRANTED?

If the Committee grants the exemption, the employer must carefully read the written decision and comply with all its terms and conditions. The employer should retain the exemption, the supporting application and any written employee agreement on record. The alternative arrangement should be implemented only within the scope of the exemption granted.

If the application is refused, the employer remains bound by the applicable CBA provision and should continue providing the prescribed allowance.

CONCLUSION

An exemption is not a formality, and employee agreement alone is not sufficient. Farmers proposing to replace a prescribed cash allowance with an in-kind benefit should prepare a properly justified application, engage the affected employees, and obtain the Committee's written decision before implementing the substitution.

In the meantime, the existing CBA obligation remains in force.

N.B: *Many farmers are providing benefits in kind in place of prescribed cash allowances. Without the appropriate exemption, such arrangements may be contrary to the provisions of S.I. 41 of 2022 and expose employers to disputes and potential liability. Farmers are encouraged to regularise existing arrangements before disputes arise.*

CFU is engaging the NEC to have the CBA amended to provide a clear legal framework for the provision of benefits in kind as alternatives to cash allowances.

Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.

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