



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Supplementary*

#### **51 Regulations and orders**

- (1) Except to the extent that this Act makes provision to the contrary, any power conferred by this Act to make an Order in Council, regulations or an order includes power—
  - (a) to make different provision for different cases or for different descriptions of person; and
  - (b) to make incidental, consequential, supplemental or transitional provision and savings.
- (2) Paragraph (a) of subsection (1) above does not have effect in relation to regulations under section 1(3) above or an order under section 49 above.
- (3) No recommendation shall be made to Her Majesty to make an Order in Council under any provision of this Act unless a draft of the Order in Council has been laid before Parliament and approved by a resolution of each House of Parliament.
- (4) Any power of a Minister of the Crown to make regulations or an order under this Act shall be exercisable by statutory instrument.
- (5) A statutory instrument containing (whether alone or with other provisions) regulations under this Act shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Subsection (5) above shall not have effect in relation to a statutory instrument if the only regulations under this Act which the instrument contains are regulations under section 21 or 47(2) or (4) above.
- (7) A statutory instrument—
  - (a) which contains (whether alone or with other provisions) any regulations under section 21 or 47(2) or (4) above or an order under section 49 above, and
  - (b) which is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (8) The power—
- (a) of the Department of Economic Development to make an order under section 26(6) above, or
  - (b) of the Department of Agriculture for Northern Ireland to make regulations under section 47 above,

shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and any such order or regulations shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act Northern Ireland) 1954.

## 52 Expenses

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred under this Act by a Minister of the Crown or government department or by a body performing functions on behalf of the Crown; and
- (b) any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

## 53 Repeals and revocations

The enactments mentioned in Schedule 3 to this Act are repealed, and the instruments mentioned in that Schedule are revoked, to the extent specified in the third column of that Schedule.

## 54 Meaning of “worker”, “employee” etc

- (1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
- (2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) In this Act “worker” (except in the phrases “agency worker” and “home worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—
  - (a) a contract of employment; or
  - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker’s contract shall be construed accordingly.

- (4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.
- (5) In this Act “employment”—

- (a) in relation to an employee, means employment under a contract of employment; and
  - (b) in relation to a worker, means employment under his contract;
- and “employed” shall be construed accordingly.

## **55 Interpretation**

- (1) In this Act, unless the context otherwise requires,—
- “civil proceedings” means proceedings before an employment tribunal or civil proceedings before any other court;
  - “enforcement notice” shall be construed in accordance with section 19 above;
  - “government department” includes a Northern Ireland department, except in section 52(a) above;
  - “industrial tribunal” means a tribunal established under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996;
  - “notice” means notice in writing;
  - “pay reference period” shall be construed in accordance with section 1(4) above;
  - “penalty notice” shall be construed in accordance with section 21 above;
  - “person who qualifies for the national minimum wage” shall be construed in accordance with section 1(2) above; and related expressions shall be construed accordingly;
  - “prescribe” means prescribe by regulations;
  - “regulations” means regulations made by the Secretary of State, except in the case of regulations under section 47(2) or (4) above made by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly or by the Department of Agriculture for Northern Ireland.
- (2) Any reference in this Act to a person being remunerated for a pay reference period is a reference to the person being remunerated by his employer in respect of his work in that pay reference period.
- (3) Any reference in this Act to doing work includes a reference to performing services; and “work” and other related expressions shall be construed accordingly.
- (4) For the purposes of this Act, a person ceases to be of compulsory school age in Scotland when he ceases to be of school age in accordance with sections 31 and 33 of the Education (Scotland) Act 1980.
- (5) Any reference in this Act to a person ceasing to be of compulsory school age shall, in relation to Northern Ireland, be construed in accordance with Article 46 of the Education and Libraries (Northern Ireland) Order 1986.
- (6) Any reference in this Act to an employment tribunal shall, in relation to Northern Ireland, be construed as a reference to an industrial tribunal.

## **56 Short title, commencement and extent**

- (1) This Act may be cited as the National Minimum Wage Act 1998.

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*Status: This is the original version (as it was originally enacted).*

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- (2) Apart from this section and any powers to make an Order in Council or regulations or an order (which accordingly come into force on the day on which this Act is passed) the provisions of this Act shall come into force on such day or days as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (3) This Act extends to Northern Ireland.