

*Draft Regulations laid before Parliament in accordance with section 51(5) of the National Minimum Wage Act 1998 for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2004 No.**

**TERMS AND CONDITIONS OF EMPLOYMENT**

The National Minimum Wage Regulations  
1999 (Amendment) Regulations 2004

<i>Made</i>	- - - -	2004
<i>Coming into force</i>		
<i>Regulations 3 and 4(3)</i>		6th April 2005
<i>All other Regulations</i>		1st October 2004

Whereas a draft of the following Regulations was laid before Parliament in accordance with section 51(5) of the National Minimum Wage Act 1998(1) and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred upon her by sections 2 and 51 of the National Minimum Wage Act 1998 hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Minimum Wage Regulations 1999 (Amendment) Regulations 2004.

(2) Except for regulations 3 and 4(3), which shall come into force on 6th April 2005, these Regulations shall come into force on 1st October 2004.

(3) In these Regulations, the “principal regulations” means the National Minimum Wage Regulations 1999(2) and “pay reference period” has the meaning assigned to that expression by regulation 10 of the principal regulations.

**Amendments to the Principal Regulations**

2. For regulations 24 (output work), 25 (“fair estimate” agreements for output work), and 26 (determining the hours of output work where there is a “fair estimate” agreement) of the principal regulations substitute—

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(1) 1998 c39.  
(2) SI 1999/584.

**“Output Work**

**24.—**(1) The output work of a worker in a pay reference period relating to a type of piece produced or a type of task performed shall be the number of hours spent by the worker during the pay reference period in producing that type of piece, or performing that type of task, except where the output work relating to that type of piece or task is rated output work.

(2) Output work is rated output work if —

- (a) it satisfies the conditions in paragraph (1) of regulation 25, and
- (b) it is work in respect of which the employer has given the worker a notice that satisfies the requirements of paragraph (2) of regulation 25.

**Rated output work: conditions and notice**

**25.—**(1) The conditions referred to in regulation 24(2)(a) are—

- (a) that the output work relating to the type of piece in question (“the subject piece”) or the type of task in question (“the subject task”) is work in respect of which the worker’s contract does not set any normal, minimum or maximum working hours;
- (b) that the employer does not in practice determine or control the hours worked by the worker in relation to the subject piece or the subject task; and
- (c) that the employer has determined the mean hourly output rate, as defined in paragraph (3) of regulation 26, for the subject piece or the subject task.

(2) A notice satisfies the requirements of this paragraph if—

- (a) it was given in writing to the worker at any time before the beginning of the pay reference period (whether or not it was given before the beginning of, and had effect in relation to, any earlier pay reference periods); and
- (b) it contains statements conveying the following information—
  - (i) that it is being given to inform the worker that, for the purpose of securing compliance with the national minimum wage legislation, he will be treated, in respect of, as appropriate, his production of the subject piece or his performance of the subject task during the pay reference period, as working for a certain period of time;
  - (ii) that, for the purpose of determining the period of time the worker will be treated as working, the employer has conducted a test or, where applicable, made an estimate of the average speed at which workers employed by the employer produce the subject piece or perform the subject task, as appropriate;
  - (iii) what the mean hourly output rate for the subject piece or the subject task is;
  - (iv) the rate to be paid to the worker for the production of a single subject piece or the performance of a single subject task, as appropriate; and
  - (v) the telephone number of the national minimum wage helpline, which number is identified as being the national minimum wage helpline number.

**Rated output work: determination of hours worked**

**26.—**(1) Where output work is rated output work consisting of the production of subject pieces, the number of hours of output work spent by the worker in producing subject pieces during the pay reference period shall be treated as being the number of hours that a worker producing the subject pieces at the mean hourly output rate would have taken to produce the number of subject pieces produced by the worker in the pay reference period.

(2) Where output work is rated output work consisting of the performance of subject tasks, the number of hours of output work spent by the worker in performing subject tasks during the pay reference period shall be treated as being the number of hours that a worker performing at the mean hourly output rate would have taken to perform the number of subject tasks performed by the worker in the pay reference period.

(3) In this regulation and in regulations 25 and 26A, “mean hourly output rate” means the average number (including any fraction) of—

- (a) subject pieces, or fraction of a subject piece, produced in an hour by workers of the employer producing the subject piece, or
- (b) subject tasks, or fraction of a subject task, performed in an hour by workers of the employer performing the subject task,

as determined in accordance with regulation 26A.

#### **Rated output work: determining the mean hourly output rate**

**26A.**—(1) To determine the mean hourly output rate for a subject piece or a subject task, the employer must—

- (a) conduct a satisfactory test, in accordance with paragraph (2), of the speed at which every worker in one of the groups specified in that paragraph produces the subject piece or performs the subject task and divide the total number of subject pieces or subject tasks (or the fraction of a subject piece or subject task) produced or performed, in an hour by all of the workers producing the subject piece or performing the subject task by the number of workers tested, or
- (b) make a satisfactory estimate, in accordance with paragraph (3), of the average speed, in terms of pieces or tasks per hour, at which the workers producing the subject piece or performing the subject task are likely to produce that piece or perform that task.

(2) The permitted groups for the purposes of the test mentioned in paragraph (1)(a) are—

- (a) all of the workers of the employer who produce the subject piece or perform the subject task, or
- (b) a sample of those workers of the employer that, in respect of the speed at which the workers in the sample work, is representative of all those workers,

and a test is satisfactory only if all the workers in the group are tested in working circumstances similar to those in which the worker is or will be producing the subject piece or performing the subject task.

(3) Subject to paragraph (4), an estimate is satisfactory for the purposes of paragraph (1)

(b) if the employer has—

- (a) tested the average speed, in terms of pieces or tasks per hour, at which a sample of workers of the employer working in similar working circumstances to the worker produce a piece or perform a task that is reasonably similar to the subject piece or subject task and, in making the estimate, has fairly adjusted that average speed to take account of the increased or decreased time involved in production of the subject piece or performance of the subject task, or
- (b) tested the average speed, in terms of pieces or tasks per hour, at which a sample of workers of the employer working in different working circumstances from the worker produce the subject piece or perform the subject task and, in making the estimate, has fairly adjusted that average speed to take account of the increased or decreased time involved in producing the subject piece or performing the subject task in the same working circumstances as the worker,

and if the sample of workers tested is, so far as reasonably practicable, representative, in respect of the speed at which they work, of the speed at which the workers who produce the subject piece or perform the subject task work.

(4) Where a satisfactory test has been conducted or a satisfactory estimate has been made, subsequent changes in the number or identity of the workers of the employer who produce the subject piece or perform the subject task do not require the employer to conduct a further satisfactory test or make a further satisfactory estimate unless the employer has reason to believe that the changes materially affect the mean hourly output rate.”

3. In paragraphs (1) and (2) of regulation 26 of the principal regulations after “being” insert “120 per cent of”.

### **Transitional Provisions**

4.—(1) The amendments to the principal regulations made by regulation 2 do not apply in relation to any pay reference period beginning before 1st October 2004.

(2) For the purposes of the application of the regulations substituted into the principal regulations by regulation 2, in relation to a pay reference period beginning on or after 1st October 2004, it shall be irrelevant whether the satisfactory test or satisfactory estimate required by regulation 26A of the principal regulations was conducted or made before or after regulation 2 came into force.

(3) The amendments to the principal regulations made by regulation 3 do not apply in relation to any pay reference period beginning before 6th April 2005.

Parliamentary Under-Secretary of State for  
Employment Relations, Competition and  
Consumers,  
Department of Trade and Industry

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations amend the National Minimum Wage Regulations 1999 (“the principal regulations”). The majority of the provisions come into force on 1st October 2004, the remainder on 6th April 2005.

The Regulations replace existing provisions relating to output workers (those paid not for the time that they work, but for the piece produced or task performed). The Regulations replace the system of “fair estimate agreements”, under which employers set a fair estimate of the hours needed to complete a block of work and then pay the worker the hourly rate of the national minimum wage for the hours actually worked up to the limit set in the estimate, with a new system called “rated output work”.

Under the new system, the employer must give his workers a notice containing specified information and must test his workers to determine “the mean hourly output rate” ie. the average number of pieces of the same type produced or tasks of the same type performed in an hour by his workers. The Regulations provide for the mean hourly output rate to be estimated in certain circumstances. For the purposes of the Regulations, the number of hours taken by a worker in producing the relevant pieces or performing the relevant tasks during a pay reference period (which is defined in regulation 10 of the principal regulations) is deemed to be the same number of hours that a worker working at the mean hourly output rate would have taken to produce the same number of pieces or perform the same number of tasks during the pay reference period. The employer must pay his workers producing that piece or performing that task an amount per piece or task which, given that his workers are deemed to have worked at the mean hourly output rate, is at least equivalent to the hourly rate of the national minimum wage.

The Regulations further provide that, with effect from 6th April 2005, the number of hours taken by a worker in producing pieces or performing tasks during the pay reference period will be treated as being 120 per cent of the number of hours that a worker working at the mean hourly output rate would have taken to produce or perform the same number of the same type of pieces or tasks.

The Regulations contain transitional provisions.

A Regulatory Impact Assessment of the estimated costs and benefits to businesses of these Regulations has been placed in the Libraries of both Houses of Parliament. Copies are available to the public from The Employment Relations Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET and on the DTI website at [www.dti.gov.uk](http://www.dti.gov.uk).