

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

DRAFT STATUTORY INSTRUMENTS

2004 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The National Minimum Wage Regulations
1999 (Amendment) (No. 2) Regulations 2004

Made - - - - 2004
Coming into force - - 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 1(3), 2, 3 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) (No. 2) Regulations 2004 and shall come into force on 1st October 2004.

(2) 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. In regulation 11(3) of the principal regulations (the rate of the national minimum wage), for “£4.50” substitute “£4.85”.

3. In regulation 12 of the principal regulations (workers who do not qualify for the national minimum wage)—

- (a) omit paragraph (1); and

(1) 1998 c. 39.

(2) S.I.1999/584.

(3) Regulation 11 was amended, and the amount increased, by S.I. 2000/1989, S.I. 2001/2763, S.I. 2002/1999 and S.I. 2003/1923.

- (b) in paragraph (3)(b)(4)—
- (i) for sub-paragraph (i), substitute—
 - “(i) in England, under the Government arrangements known, at 1st October 2004, as Apprenticeships or Advanced Apprenticeships;”;
 - (ii) in sub-paragraph (ii), for “2000” substitute “2004”;
 - (iii) in sub-paragraph (iii), for “2000” substitute “2004”; and
 - (iv) after sub-paragraph (iii), insert—
 - “(iv) in Wales, under the Government arrangements known, at 1st October 2004, as Modern Apprenticeships or Foundation Modern Apprenticeships.”
- (c) after paragraph (4) insert—
- “(4A) A worker who is participating in a scheme provided to him—
 - (a) in England, under the Government arrangements known, at 1st October 2004, as Entry to Employment,
 - (b) in Scotland, under the Government arrangements known, at 1st October 2004, as Get Ready for Work,
 - (c) in Northern Ireland, under the Government arrangements known, at 1st October 2004, as Access,
 - (d) in Wales, under the Government arrangements known, at 1st October 2004, as Skillbuild,
 does not qualify for the national minimum wage in respect of work done for his employer as part of the scheme.”
- (d) in paragraph (5), at the end of sub-paragraph (a), insert “or (4A).”
4. In regulation 13 of the principal regulations (workers who qualify for the national minimum wage at a different rate)—
- (a) in paragraph (1)(5), for “£3.80” substitute “£4.10”;
 - (b) after paragraph (1) insert—
 - “(1A) The hourly rate of the national minimum wage is £3.00 for a worker who has not attained the age of 18.”; and
 - (c) in paragraph (2)(6), for “£3.80” substitute “£4.10”.
5. In regulation 36(1) of the principal regulations (amount permitted to be taken into account where living accommodation is provided), for “£3.50” substitute “£3.75”.(7)
6. In regulation 38 (records to be kept by an employer)—
- (a) in paragraph (3) omit “, 25(1) (output work)”(8);
 - (b) after paragraph (3), insert—
 - “(3A) The employer of a worker who qualifies for the national minimum wage who has given the worker a notice in accordance with regulation 24(2)(b), shall keep a copy

(4) Regulation 12(3) was substituted by S.I. [2000/1989](#) and increased the number of arrangements to be treated as employment under a contract of apprenticeship.

(5) Regulation 13(1) was amended, and the amount increased, by S.I. [2000/1411](#), S.I. [2001/2763](#), S.I. [2002/1999](#) and S.I. [2003/1923](#).

(6) Regulation 13(2) was amended, and the amount increased, by S.I. [2001/2763](#), S.I. [2002/1999](#) and S.I. [2003/1923](#).

(7) Regulation 36(1) was substituted by S.I. [2003/1923](#).

(8) Regulation 2 of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2004 (S.I. [2004/1161](#)), which comes into force on 1st October 2004, substitutes a new regulation 25.

of that notice and a copy of such data as is necessary to show how he has determined the rates referred to in paragraphs (iii) and (iv) of regulation 25(2)(b).”

(c) in paragraph (4), for “paragraphs (1) and (3),” substitute “paragraphs (1), (3), and (3A),”.

Transitional Provision

7.—(1) The amendments made to the principal regulations by regulations 3(a), 4(b) and 6 do not apply in relation to any pay reference period beginning before 1st October 2004.

(2) The disqualification of a person from entitlement to the national minimum wage effected by paragraph (4A) of regulation 12 of the principal regulations (inserted into regulation 12 by regulation 3(c) of these Regulations) does not apply in relation to any person who began his participation in the scheme provided to him under the Government arrangements referred to in that paragraph before these Regulations came into force.

(3) Notwithstanding the omission of the words in regulation 38(3) of the principal regulations contained in regulation 6(a), the duty of the employer to keep records imposed by virtue of the omitted words shall continue for the period of three years referred to in regulation 38(7).

Revocation Provision

8. Regulations 2 and 3 of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2003⁽⁹⁾ are hereby revoked.

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

2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which amend the National Minimum Wage Regulations 1999 (“the principal regulations”) and come into force on 1st October 2004, increase the minimum hourly rate of the national minimum wage from £4.50 to £4.85. They also increase the rate to be paid to those (including workers aged between 18 and 21) who qualify for the national minimum wage at a different rate, from £3.80 to £4.10. In addition, the Regulations provide, for the first time, that workers aged below 18 who have ceased to be of compulsory school age qualify for the national minimum wage. The Regulations set an hourly rate of £3.00 for such workers.

The Regulations amend the list of Government schemes to be treated as employment under a contract of apprenticeship (in many cases, participants, depending upon their age, do not qualify for the national minimum wage or only qualify after the first 12 months of such participation). They also have the effect that persons who are workers on specified Government schemes at pre-apprenticeship level will not be entitled to the national minimum wage, whether they are employed by the employer or not.

The Regulations also amend the per day value of accommodation amount, which is applicable where an employer provides a worker with accommodation. The alteration increases the amount from £3.50 to £3.75 per day that accommodation is provided.

The Regulations amend the record-keeping requirements contained in the principal regulations to provide that the employer of an output worker (ie. one paid per piece produced or task performed) must, where relevant, keep a copy of a certain notice served upon the worker and copy of data showing how he has arrived at certain rates required to be contained in the notice.

The Regulations contain three transitional provisions.

The Regulations contain a revocation provision which revokes previous provisions that increased the minimum hourly rate of the national minimum wage and the rate paid to those who qualify for the national minimum wage at a different rate.

A Regulatory Impact Assessment of the estimated costs and benefits of the rate increases and the introduction of the rate for those who have not attained the age of 18 has been placed in the Libraries of both Houses of Parliament. Copies are available to the public from The Employment Relations Directorate, P&S, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET and on the DTI website at www.dti.gov.uk.