



# Employment Act 2008

## 2008 CHAPTER 24

### *National minimum wage etc*

#### **8 Arrears payable in cases of non-compliance**

- (1) In the National Minimum Wage Act 1998 (c. 39), section 17 (which makes provision for the additional remuneration to which a worker is entitled in cases of non-compliance) is amended as specified in subsections (2) to (5).
- (2) In subsection (1), after “shall” there is inserted “at any time (“the time of determination)”
- (3) In that subsection, for “the amount described in subsection (2) below” there is substituted “whichever is the higher of—
  - (a) the amount described in subsection (2) below, and
  - (b) the amount described in subsection (4) below.”
- (4) In subsection (2), for “That amount” there is substituted “The amount referred to in subsection (1)(a) above”.
- (5) After subsection (3) there is inserted—
  - “(4) The amount referred to in subsection (1)(b) above is the amount determined by the formula—

$$\frac{A}{R1} \times R2$$

where—

A is the amount described in subsection (2) above,  
R1 is the rate of national minimum wage which was payable in respect of the worker during the pay reference period, and  
R2 is the rate of national minimum wage which would have been payable in respect of the worker during that period had the rate payable in respect

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*Status: This is the original version (as it was originally enacted).*

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of him during that period been determined by reference to regulations under section 1 and 3 above in force at the time of determination.

- (5) Subsection (1) above ceases to apply to a worker in relation to any pay reference period when he is at any time paid the additional remuneration for that period to which he is at that time entitled under that subsection.
- (6) Where any additional remuneration is paid to the worker under this section in relation to the pay reference period but subsection (1) above has not ceased to apply in relation to him, the amounts described in subsections (2) and (4) above shall be regarded as reduced by the amount of that remuneration.”
- (6) In the Agricultural Wages Act 1948 (c. 47), in section 3A(3A) (application of section 17 of the National Minimum Wage Act 1998 for the purposes of agricultural wages legislation in England and Wales)—
- (a) in paragraph (a), in the substituted subsection (2)—
- (i) for “That amount” there is substituted “The amount referred to in subsection (1)(a) above”;
- (ii) for “under this Act” there is substituted “under the Agricultural Wages Act 1948”;
- (b) after paragraph (b) there is inserted—
- “(c) for subsection (4) there shall be substituted—
- “(4) The amount referred to in subsection (1)(b) above is the amount determined by the formula—

$$\frac{A}{R1} \times R2$$

where—

A is the amount described in subsection (2) above,

R1 is the minimum rate applicable under the Agricultural Wages Act 1948 in respect of the worker during the pay reference period, and

R2 is the minimum rate which would have been applicable under that Act in respect of the worker during the pay reference period had the minimum rate applicable under that Act in respect of the worker during that period been determined by reference to any order under section 3(1)(a) of that Act in force at the time of determination.””

- (7) Nothing in subsections (2) to (5) affects section 17 of the National Minimum Wage Act 1998 (c. 39) as it has effect for the purposes of—
- (a) the Agricultural Wages (Scotland) Act 1949 (c. 30), or
- (b) the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (SI 1977/2151) (N.I.22).
- (8) The amendments made by this section apply in relation to a pay reference period (within the meaning of the National Minimum Wage Act 1998) ending before, as well as after, this section comes into force.