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STATUTORY INSTRUMENTS

2008 No. 1894

TERMS AND CONDITIONS OF EMPLOYMENT

The National Minimum Wage Regulations 1999 (Amendment) Regulations 2008

Made - - - - 16th July 2008

Coming into force in accordance with regulation 1

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

The Secretary of State, in exercise of the powers conferred by sections 1(3), 2, 3 and 51 of the National Minimum Wage Act 1998, makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Minimum Wage Regulations 1999 (Amendment) Regulations 2008.

(2) Regulations 1, 4 and 7 shall come into force on the day after the day on which these Regulations are made and the rest of these Regulations shall come into force on 1st October 2008.

(3) In these Regulations the "Principal Regulations" means the National Minimum Wage Regulations 1999(**2**).

Amendments to the Principal Regulations

2. In regulation 2(1)(**3**) of the Principal Regulations (general interpretative provisions), in the definition of "arrangements made by the Government"—

(a) for "arrangements made by the Government" substitute "Government arrangements";

(b) in paragraph (b), after "Secretary of State" insert "or the Scottish Ministers".

3. In regulation 11(**4**) of the Principal Regulations (the rate of the national minimum wage), for "£5.52" substitute "£5.73".

(**1**) 1998 c.39; section 3(1A) was inserted by S.I. 1999/583 and amended by S.I. 2007/2042.
(**2**) S.I. 1999/584.
(**3**) Regulation 2 was amended by S.I. 2000/1989 and S.I. 2001/1108.
(**4**) Regulation 11 was amended, and the amount increased, by S.I. 2000/1989, S.I. 2001/2673, S.I. 2002/1999, S.I. 2003/1923, S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/2001 and S.I. 2007/2318.

4.—(1) The following amendments are made to regulation 12(**5**)of the Principal Regulations (workers who do not qualify for the national minimum wage).

(2) For paragraph (6) substitute the following—

"(6) Paragraph (5) does not apply to a person who—

(a) is a worker within the meaning given by section 54(3) of the Act,

(b) is participating in a scheme falling within sub-paragraph (a) of paragraph (5),

(c) is employed by the employer for whom he works under the scheme, and

(d) is—

(i) remunerated by the employer in respect of that employment, or

(ii) entitled to remuneration from the employer under his contract with the employer, or

(iii) participating in a trial period of work with a prospective employer under Government arrangements for a period in excess of six weeks.

(6A) For the purposes of paragraph (6)(d)(i) and (6)(d)(ii), remuneration does not include a payment by an employer to a person in respect of expenses—

(a) actually incurred in the performance of that person's duties, or

(b) reasonably estimated as likely to be or to have been so incurred.

(6B) For the purposes of paragraph (6A), expenses which—

(a) are incurred in order to enable the person to perform his duties, and

(b) are reasonably so incurred,

are to be regarded as actually incurred in the performance of his duties.".

(3) In paragraph (7), for "three" substitute "six".

5. In regulation 13 of the Principal Regulations (workers who qualify for the national minimum wage at a different rate)—

(a) in paragraph (1)(**6**), for "£4.60" substitute "£4.77"; and

(b) in paragraph (1A)(**7**), for "£3.40" substitute "£3.53".

6. In regulation 36(1)(**8**) of the Principal Regulations (amount permitted to be taken into account where living accommodation is provided), for "£4.30" substitute "£4.46".

Transitional Provision

7. The amendments to the Principal Regulations made by regulation 4 do not apply in relation to any work trial commencing before the day after the day on which these Regulations are made.

Revocation Provision

8. The following provisions of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2007(**9**) are revoked—

(**5**) Regulation 12 was amended by S.I. 2000/1989, S.I. 2001/1108, S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/1031 and S.I. 2007/2318.

(**6**) Regulation 13(1) was amended and the amount increased by, S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/2001 and S.I. 2007/2318.

(**7**) Regulation 13(1A) was inserted by S.I. 2004/1930 and amended and the amount increased by S.I. 2005/2019, S.I. 2006/2001 and S.I. 2007/2318.

(**8**) Regulation 36(1) was amended and the amount increased by S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/2001 and S.I. 2007/2318.

(**9**) S.I. 2007/2318.

(a) regulation 2;
(b) regulation 4;
(c) regulation 8.

Pat McFadden
Minister of State for Employment Relations and Postal Affairs
Department for Business, Enterprise and Regulatory Reform

16th July 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Minimum Wage Regulations 1999 (the "Principal Regulations"). Regulations 1, 4 and 7 come into force on the day after the day on which the Regulations are made. The other regulations come into force on 1st October 2008.

Regulation 2 amends regulation 2(1) of the Principal Regulations by substituting "Government arrangements" for "arrangements made by the Government" to reflect the wording in regulation 12 of the Principal Regulations. It also clarifies that such arrangements can include arrangements made by the Scottish Ministers under section 2 of the Employment and Training Act 1973.

Regulation 3 increases the principal rate of the national minimum wage from £5.52 to £5.73 per hour (regulation 2 of the Principal Regulations). The Regulations also increase the rate paid to workers aged between 18 and 21 from £4.60 to £4.77 per hour (regulation 5(a) of the Principal Regulations) and the rate to be paid to workers aged below 18 who have ceased to be of compulsory school age from £3.40 to £3.53 per hour (regulation 5(b) of the Principal Regulations).

Regulation 4(2) amends regulation 12(6) of the Principal Regulations by substituting a new paragraph. The substituted paragraph (6) clarifies when workers on schemes made under Government arrangements qualify for the national minimum wage. It adds a requirement that a worker must be remunerated or entitled to be remunerated by the employer in order to qualify for national minimum wage. This is to ensure that workers who are in receipt of state benefits rather than remuneration from an employer do not qualify for national minimum wage. Reimbursement of expenses actually incurred in the performance of the work or reasonably incurred in order for the worker to perform his work are not considered remuneration. The substituted paragraph (6) also extends the period for which a worker participating on a work trial does not qualify for national minimum wage from three weeks to six weeks.

Regulation 4(3) amends regulation 12(7) of the Principal Regulations so that the regulation extends the period for which a worker participating on a work trial does not qualify for national minimum wage from three weeks to six weeks.

Regulation 6 amends the per day value of the accommodation amount which is applicable where an employer provides a worker with living accommodation. The amendment increases the amount from £4.30 to £4.46 for each day that accommodation is provided (regulation 36(1) of the Principal Regulations).

The Regulations contain a transitional provision. This provides that regulation 4 does not apply in relation to work trials that have commenced before Regulation 4 has come into force.

The Regulations contain a revocation provision. This revokes previous provisions which increased the principal hourly rate of the national minimum wage, the rate to be paid to those who qualified for the national minimum wage at a different rate and the daily value of the accommodation amount.