

2010 No. 1901

TERMS AND CONDITIONS OF EMPLOYMENT

**The National Minimum Wage Regulations 1999 (Amendment)
Regulations 2010**

Made - - - - - *22nd July 2010*

Coming into force - - - - - *1st October 2010*

A draft of these Regulations was laid before Parliament in accordance with section 51(5) of the National Minimum Wage Act 1998(a) 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 2010 and shall come into force on 1st October 2010.

(2) In these Regulations “the Principal Regulations” means the National Minimum Wage Regulations 1999(b).

Amendments to the Principal Regulations

2. In the definition of “worker” in paragraph (1) of regulation 2 of the Principal Regulations (general interpretative provisions), for “paragraphs (3), (5) and (6) of regulation 12” substitute “paragraphs (5) and (6) of regulation 12”.

3. In regulation 11 of the Principal Regulations (the rate of the national minimum wage), for “£5.80” substitute “£5.93”.

4. In regulation 12 of the Principal Regulations (workers who do not qualify for the national minimum wage)—

(a) omit paragraphs (2) to (4);

(b) for paragraph (4A) substitute—

“(4A) A worker who is participating in a scheme provided to that worker—

(a) in England, under the Government arrangements known, at 1st October 2010, as Programme Led Apprenticeships,

(a) 1998 c.39; section 3 (1A) was inserted by S.I. 1999/583 and amended by S.I. 2007/2042; sections 51(6) and 51(7) were amended by the Employment Act 2008 (c. 23), section 9 (3), 20 and Schedule, Part 2.

(b) S.I. 1999/584; relevant amending instruments are 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, S.I. 2007/2318, S.I. 2008/1894 and S.I. 2009/1902.

- (b) in Scotland, under the Government arrangements known, at 1st October 2010, as Get Ready for Work or Skillseekers,
- (c) in Northern Ireland, under the Government arrangements known, at 1st October 2010, as Programme Led Apprenticeships or Training for Success,
- (d) in Wales, under the Government arrangements known, at 1st October 2010, as Skill Build,

does not qualify for the national minimum wage in respect of work done for the employer as part of the scheme.”;

- (c) for paragraph (5) substitute—

“(5) A worker who is participating in a scheme designed to provide training, work experience or temporary work, or to assist in seeking or obtaining work, which is—

- (a) a scheme provided under Government arrangements that are not specified in paragraph (4A) or (5A), or
- (b) a scheme, not being one provided under Government arrangements, funded in whole or in part under the European Social Fund,

does not qualify for the national minimum wage in respect of work done for the employer as part of that scheme except to the extent that paragraph (6) or (7) otherwise provides.”;

- (d) after paragraph (5) insert—

“(5A) For the purposes of paragraph (5), the Government arrangements specified are—

- (a) in England, Government arrangements known, at 1st October 2010, as Apprenticeships or Advanced Apprenticeships;
- (b) in Scotland, Government arrangements known, at 1st October 2010, as Modern Apprenticeships;
- (c) in Northern Ireland, Government arrangements known, at 1st October 2010, as ApprenticeshipsNI or Modern Apprenticeships;
- (d) in Wales, Government arrangements known, at 1st October 2010, as Foundation Modern Apprenticeships, Modern Apprenticeships, Foundation Apprenticeships or Apprenticeships.”; and

- (e) in paragraph (7), for “(c)” substitute “(b)”.

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

“Workers who qualify for the national minimum wage at a different rate

13.—(1) Subject to paragraph (3), the hourly rate of the national minimum wage is £4.92 for a worker who has attained the age of 18 but not the age of 21.

(2) Subject to paragraph (3), the hourly rate of the national minimum wage is £3.64 for a worker who has not attained the age of 18.

(3) The hourly rate of the national minimum wage is £2.50 for a worker who—

- (a) is employed under a contract of apprenticeship or, in accordance with paragraph (6), is to be treated as employed under a contract of apprenticeship, and
- (b) is within the first 12 months after the commencement of that employment or has not attained the age of 19.

(4) Paragraphs (1) to (3) do not apply in relation to a worker who, by virtue of regulation 12, does not qualify for the national minimum wage.

(5) For the purposes of paragraph (3)(b) a person does not commence employment with an employer where that person has previously been employed by another employer and continuity of employment is preserved between the two employments by or under any enactment.

(6) A person is to be treated for the purposes of paragraph (3)(a) as a worker who is employed under a contract of apprenticeship, if, and only if, that person is—

- (a) a worker within the meaning given by section 54(3) of the Act; and
- (b) engaged—
 - (i) in England, under the Government arrangements known, at 1st October 2010, as Apprenticeships or Advanced Apprenticeships;
 - (ii) in Scotland, under the Government arrangements known, at 1st October 2010, as Modern Apprenticeships;
 - (iii) in Northern Ireland, under the Government arrangements known, at 1st October 2010, as ApprenticeshipsNI or Modern Apprenticeships; or
 - (iv) in Wales, under the Government arrangements known, at 1st October 2010, as Foundation Modern Apprenticeships, Modern Apprenticeships, Foundation Apprenticeships or Apprenticeships.”

6. In regulation 36(1) of the Principal Regulations (amount permitted to be taken into account where living accommodation is provided), for “£4.51” substitute “£4.61”.

7. In regulation 38(3) of the Principal Regulations (records to be kept by an employer), for “regulations 13(2)(d) (accredited training) or” substitute “regulation”.

Regulation 11(3) of the Agency Workers Regulations 2010

8. For regulation 11(3) of the Agency Workers Regulations 2010(a) (calculating the minimum amount of pay) substitute—

“(3) The minimum amount shall be not less than the amount that the agency worker would have been entitled to for the hours worked in the relevant pay reference period if the provisions of the National Minimum Wage Regulations 1999 as amended by the National Minimum Wage Regulations 1999 (Amendment) Regulations 2010 applied.”.

Transitional Provision

9. The amendments to the Principal Regulations made by regulations 4 and 5 do not apply in relation to any pay reference period beginning before 1st October 2010.

Revocation Provision

10. Regulations 2, 4 and 6 of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2009(b) are revoked.

22nd July 2010

Edward Davey
Minister for Employment Relations, Consumer and Postal Affairs
Department for Business, Innovation and Skills

(a) S.I. 2010/93.
(b) S.I. 2009/1902.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the National Minimum Wage Regulations 1999 (the “Principal Regulations”) and come into force on 1st October 2010.

Regulation 3 increases the principal rate of the national minimum wage from £5.80 to £5.93 per hour (regulation 11 of the Principal Regulations) and regulation 5 decreases the age at which this rate becomes payable from 22 to 21. The Regulations also increase the rate paid to workers aged between 18 and 20 from £4.83 to £4.92 per hour and the rate to be paid to workers aged below 18 who have ceased to be of compulsory school age from £3.57 to £3.64 per hour.

Regulation 5 provides for a national minimum wage at the rate of £2.50 per hour for apprentices who are employed under a contract of apprenticeship or who are engaged under Government arrangements in England, Scotland, Northern Ireland and Wales, as specified in regulation 13(6)(b) of the Principal Regulations. This hourly rate applies to apprentices who are within the first 12 months of that employment or engagement or who have not attained the age of 19. It applies not just to apprentices who are workers within the meaning of section 54(3) of the National Minimum Wage Act 1998 but also where they are to be regarded as workers by virtue of the additions to that definition contained in regulation 2(1) of the Principal Regulations. The additions relate to agency workers and home workers who are outside the definition of “worker” in section 54(3). Regulation 4 removes these apprentices from regulation 12 of the Principal Regulations, and updates the names of the Government arrangements in regulation 12(4A) as at 1st October 2010.

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 £4.51 to £4.61 for each day that accommodation is provided (regulation 36(1) of the Principal Regulations).

Regulation 8 amends regulation 11(3) of the Agency Workers Regulations 2010 so that it refers to the national minimum wage entitlements as prescribed by this instrument.

The Regulations contain a transitional provision. This provides that regulations 4 and 5 do not apply in relation to any pay reference period beginning before 1st October 2010.

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.

An Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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