

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

DRAFT STATUTORY INSTRUMENTS

2016 No. XXXX

TERMS AND CONDITIONS OF EMPLOYMENT

The National Minimum Wage (Amendment) Regulations 2016

Made - - - - *****
Coming into force - - *1st April 2016*

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 section 1(3), 3, 19A(8)(a) and 51(1) of the National Minimum Wage Act 1998(2) makes the following Regulations.

Citation and commencement

- 1.—(1) These Regulations may be cited as the National Minimum Wage (Amendment) Regulations 2016.
- (2) These Regulations come into force on 1st April 2016.

Amendment to the National Minimum Wage Act 1998

2. In section 19A(5A)(3) of the National Minimum Wage Act 1998 (notices of underpayment: financial penalty), for “100%” substitute “200%”.

Amendment to the National Minimum Wage Regulations 2015

3. For regulation 4 (national minimum wage rates) of the National Minimum Wage Regulations 2015(4) substitute—

(1) 1998 c.39.
(2) Section 3(1A) was inserted by S.I. 1999/583 and amended by S.I. 2007/2042; section 19A(8) was inserted by section 9(1) of the Employment Act 2008 (c.24) and amended by section 152(5) of the Small Business, Enterprise and Employment Act 2015 (c.26); section 51 was amended by the Employment Act 2008, sections 9(3) and 20 and Part 2 of the Schedule to that Act.
(3) Section 19A(5A) was inserted by section 152(3) of the Small Business, Enterprise and Employment Act 2015.
(4) S.I. 2015/621, amended by S.I. 2015/971 and S.I. 2015/1724.

“The national living wage

4. The single hourly rate of the national minimum wage for the purposes of section 1(3) of the Act (“the national living wage rate”) is £7.20.

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

4A.—(1) The hourly rate of the national minimum wage is—

- (a) £6.70 for a worker who is aged 21 years or over (but is not yet aged 25 years);
- (b) £5.30 for a worker who is aged 18 years or over (but is not yet aged 21 years);
- (c) £3.87 for a worker who is aged under 18 years;
- (d) £3.30 for a worker to whom the apprenticeship rate applies, as determined in accordance with regulation 5.

(2) If the rate in paragraph (1)(d) applies to a worker, the national living wage rate and the rates in paragraph (1)(a), (b) and (c) of this regulation do not apply to that worker.

Determining the applicable national minimum wage rate

4B. The hourly rate of the national minimum wage at which a worker is entitled to be remunerated as respects work, in a pay reference period, is the rate which applies to the worker on the first day of that period.”

Transitional provision

4. The amendment made by regulation 2 does not apply in respect of a pay reference period(5) which begins before 1st April 2016.

Date _____

Name
Minister of State for Skills
Department for Business, Innovation and Skills

(5) Section 1(4) of the National Minimum Wage Act 1998 provides that a “pay reference period” is such period as the Secretary of State may prescribe. “Pay reference period” has the meaning assigned to it by regulation 6 of the National Minimum Wage Regulations 2015 (S.I. 2015/621).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 19A of the National Minimum Wage Act 1998 (“the NMW Act”) and regulation 4 of the National Minimum Wage Regulations 2015 (“the NMW Regulations”).

Regulation 2 amends section 19A(5A) of the NMW Act. Section 19A provides that a notice of underpayment must require an employer to pay a financial penalty to the Secretary of State. The financial penalty is calculated as a percentage of the amount by which a worker has been paid below the national minimum wage in each pay reference period specified in the relevant notice of underpayment.

Section 19A(5A) makes provision for the amount of the percentage. Regulation 2 increases the percentage figure from 100% to 200%. The transitional provision in regulation 4 provides that the increased percentage of 200% is not to apply in respect of pay reference periods which begin before 1st April 2016.

Regulation 3 of these Regulations substitutes new regulations 4 to 4B for regulation 4 of the NMW Regulations. New regulation 4 makes provision for the single hourly rate of the national minimum wage for the purposes of section 1(3) of the Act (“the National Living Wage rate”). New Regulation 4A makes provision for other hourly rates of the national minimum wage and new regulation 4B makes provision for determining the applicable national minimum wage for a pay reference period.

A full impact assessment of the effect regulation 3 of these Regulations will have on the costs of business and the voluntary sector is available from the Department for Business, Innovation and Skills and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. A full impact assessment has not been produced in relation to the remainder of this instrument as no impact on businesses which comply with minimum wage laws is foreseen.