

*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.*

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DRAFT STATUTORY INSTRUMENTS

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**2015 No. XXXX**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The National Minimum Wage Regulations 2015**

*Made* - - - - *\*\*\**  
*Coming into force* - - *6th April 2015*

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.

These Regulations are made by the Secretary of State in exercise of the powers conferred by sections 1(3) and (4), 2, 3, 9 and 51(1)(b) of the National Minimum Wage Act 1998(2). Section 9 of that Act is extended by section 5 of the Agricultural Sector (Wales) Act 2014(3), section 3A(1) of the Agricultural Wages (Scotland) Act 1949(4) and Article 8A(1) of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977(5).

**PART 1**

**General and Interpretation**

**Citation and commencement**

1. These Regulations may be cited as the National Minimum Wage Regulations 2015 and come into force on 6th April 2015.

**Revocations**

2. The instruments specified in the Schedule are revoked.

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(1) 1998 c.39; sections 51(6) and 51(7) were amended by the Employment Act 2008 (c.23), sections 9(3) and 20 and the Schedule, Part 2.  
(2) 1998 c.39; section 3 was amended by SI 1999/583, regulation 2.  
(3) 2014 anaw.6.  
(4) 1949 c.30. Section 3A(1) was inserted by the National Minimum Wage Act 1998 (c.39), Schedule 2, paragraph 13.  
(5) S.I. 1977/2151 (N.I. 22). Article 8A(1) was inserted by the National Minimum Wage Act 1998 (c.39), Schedule 2, paragraph 26.

## General interpretative provisions

### 3. In these Regulations—

“the Act” means the National Minimum Wage Act 1998**(6)**;

“basic hours” has the meaning given in regulation 21**(5)**;

“compulsory school age” has the meaning given in section 8 of the Education Act 1996**(7)**;

“days” includes a fraction of a day, other than as specified in regulation 16**(2)** (amount for provision of living accommodation);

“further education course” means—

- (a) in England, a course of education, other than a higher education course, that is suitable to the requirements of persons who are over compulsory school age and that—
  - (i) is funded by the Secretary of State under section 14 of the Education Act 2002**(8)**,
  - (ii) is funded by the Chief Executive of Skills Funding**(9)**,
  - (iii) is funded by a local authority,
  - (iv) leads to a qualification to which Part 7 of the Apprenticeships, Skills, Children and Learning Act 2009**(10)** applies which is awarded or authenticated by a body which is recognised by the Office of Qualifications and Examinations Regulation under section 132 of that Act in respect of the qualification, or
  - (v) leads to a qualification that is approved pursuant to section 98 of the Learning and Skills Act 2000**(11)**;
- (b) in Wales, a course of education, other than a higher education course, that is suitable to the requirements of persons who are over compulsory school age and that—
  - (i) is funded by the Welsh Ministers,
  - (ii) is funded by a local authority,
  - (iii) leads to a qualification that is accredited by the Welsh Ministers pursuant to section 30 of the Education Act 1997**(12)**, or
  - (iv) leads to a qualification that is approved pursuant to section 99 of the Learning and Skills Act 2000**(13)**;

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**(6)** 1998 c.39.

**(7)** 1996 c.56; section 8 had words substituted by the Education Act 1997 (c. 44), section 52.

**(8)** 2002 c.32; in section 14, the heading and subsection (2) were amended, and subsection (2A) inserted, by the Children Act 2004 (c.31), section 59; subsection (2ZA) was inserted, and subsection (3) was amended, by the Education Act 2005 (c.18), Schedule 14, paragraph 23; subsection (2)(ca) was inserted and subsection (2ZA) was amended by the Education Act 2011 (c.21), section 15(2); section 14 and subsection (3) were amended by S.I. 2010/1158.

**(9)** The office of the Chief Executive of Skills Funding was established by section 81 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22).

**(10)** 2009 c.22; Part 7 was amended by the Education Act 2011 (c.21), section 22 and 23 and Schedule 8, paragraph 23 and 24.

**(11)** 2000 c.21; subsection (1) of section 98 was amended, subsection (2A) was repealed and subsection (2B) and (2C) were inserted, by the Apprenticeships, Skills, Children and Learning Act 2009, section 44, Schedule 16, Part 2 and Schedule 12, paragraph 28; subsections (4), (7) and (8) were omitted by the Education and Skills Act 2008 (c.25), section 159 and Schedule 16, paragraph 14.

**(12)** 1997 c.44; the heading and subsections (1) and (2) of section 30 were amended, subsection (1A) to (1C) were inserted, and subsection (4) was omitted by S.I. 2005/3239, Schedule 1, paragraph 14 and paragraph 15; the heading and subsection (1) to (1B) were amended, subsections (5) to (5C) were substituted for subsection (5), and subsections (1C), (1D), (2) and (6) were omitted, by Apprenticeships, Skills, Children and Learning Act 2009, Schedule 12, paragraph 15 and Schedule 16, Part 4; subsection (3) was omitted by the Learning and Skills Act 2000, section 103.

**(13)** 2000 c.21; subsections (1) and (2)(a) and (b) of section 99 were amended, subsections (2)(za) and (2ZA) were inserted, and subsection (2A) was omitted, by the Apprenticeships, Skills, Children and Learning Act 2009, Schedule 6, paragraph 45, Schedule 12, paragraph 29 and Schedule 16, Part 2; subsections (7) and (8) were omitted by S.I. 2005/3239, Schedule 1, paragraph 30.

- (c) in Scotland, a course of “fundable further education” as defined in section 5(1) and (2) of the Further and Higher Education (Scotland) Act 2005<sup>(14)</sup>;
- (d) in Northern Ireland, a course of education or training as defined in article 3(1) and (2) of the Further Education (Northern Ireland) Order 1997<sup>(15)</sup>;

“higher education course” means—

- (a) in England and Wales, a course of a description referred to in Schedule 6 to the Education Reform Act 1988<sup>(16)</sup>;
- (b) in Scotland, a course of “fundable higher education” as defined in section 5(3), (4) and (5) of the Further and Higher Education (Scotland) Act 2005;
- (c) in Northern Ireland, a course of a description referred to in Schedule 1 to the Further Education (Northern Ireland) Order 1997;

“hours” includes a fraction of an hour;

“hours of work” has the meaning given in regulation 17;

“output work” has the meaning given in regulation 36;

“pay reference period” has the meaning given in regulation 6;

“performance bonus” has the meaning given in regulation 21(6);

“remuneration” has the meaning given in regulation 8;

“salaried hours work” has the meaning given in regulation 21;

“time work” has the meaning given in regulation 30;

“unmeasured work” has the meaning given in regulation 44;

“work” is to be construed subject to regulations 57 and 58.

## PART 2

### Rates of the National Minimum Wage and Pay Reference Period

#### National minimum wage rates

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

- (a) £6.50 for a worker who is aged 21 years or over;
- (b) £5.13 for a worker who is aged 18 years or over (but is not yet aged 21 years);
- (c) £3.79 for a worker who is aged under 18 years;
- (d) £2.73 for a worker to whom the apprenticeship rate applies, as determined in accordance with regulation 5.

(2) The single 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.

(3) If the rate in paragraph (1)(d) applies to a worker, the rates in paragraph (1)(a), (b) and (c) do not apply to that worker.

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<sup>(14)</sup> 2005 asp 6.

<sup>(15)</sup> S.I. 1997/1772 (N.I.15).

<sup>(16)</sup> 1988 c.40.

## Determining whether the apprenticeship rate applies

5.—(1) The apprenticeship rate applies to a worker—

- (a) who is employed under a contract of apprenticeship or apprenticeship agreement (within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009), or is treated as employed under a contract of apprenticeship, and
- (b) who is within the first 12 months after the commencement of that employment or under 19 years of age.

(2) A worker is treated as employed under a contract of apprenticeship if the worker is engaged—

- (a) in England, under Government arrangements known as Apprenticeships, Advanced Apprenticeships, Intermediate Level Apprenticeships, Advanced Level Apprenticeships or under a Trailblazer Apprenticeship;
- (b) in Scotland, under Government arrangements known as Modern Apprenticeships;
- (c) in Northern Ireland, under Government arrangements known as Apprenticeships NI; or
- (d) in Wales, under Government arrangements known as Foundation Apprenticeships, Apprenticeships or Higher Apprenticeships.

(3) In paragraph (1)(b), a worker does not commence employment with an employer where that worker has previously been employed by another employer and the continuity of employment is preserved between the two employments by or under any enactment.

(4) In this regulation—

(a) “Government arrangements” means—

- (i) in England, arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973(17) or section 17B of the Jobseekers Act 1995(18),
- (ii) in Wales, arrangements made by the Secretary of State or the Welsh Ministers under section 2 of the Employment and Training Act 1973 or the Secretary of State under section 17B of the Jobseekers Act 1995,
- (iii) in Scotland, arrangements made by the Secretary of State or the Scottish Ministers under section 2 of the Employment and Training Act 1973 or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990(19),
- (iv) in Northern Ireland, arrangements made by the Department for Employment and Learning under section 1 of the Employment and Training Act (Northern Ireland) 1950(20);

(b) “Trailblazer Apprenticeship” means an agreement between an employer and a worker which provides for the worker to perform work for that employer and for the employer,

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(17) 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25; subsections (3A) to (3B) were inserted by the Trade Union Reform and Employment Rights Act 1993 (c.19), section 47; subsections (2) and (6) were repealed by the Employment Act 1989 (c.38), section 29(4) and Schedule 7, paragraph 1; the powers under section 2 are exercisable by the Welsh Ministers concurrently with the Secretary of State by virtue of S.I. 1999/672 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(18) 1995 c.18.

(19) 1990 c.35 (S.); subsections (3)(b) to (c) and (4) of section 2 were amended, and subsection (3)(d) was inserted, by the Trade Union Reform and Employment Rights Act 1993 (c.19), section 47 and Schedule 10, paragraph 1; subsection (4)(a) was amended by the Equality Act 2010 (c.15), Schedule 26(1), paragraph 20; subsection (6) was amended by S.I. 1999/1820.

(20) 1950 c.29 (N.I.); the powers of the Department under section 1 were extended by S.I. 1974/2144 (N.I.7), Article 7; subsections (1) to (1C) were substituted for subsections (1) to (1A) by S.I. 1988/1087 (N.I. 10); subsections (2) and (3) were amended by S.I. 1990/1200 (N.I. 8), Article 5; section 1(1A)(d) was amended by the Employment Act (Northern Ireland) 2010 c.12 (N.I.), Schedule 1, paragraph 1.

or another person, to provide training in order to assist the worker to achieve the apprenticeship standard in the work done under the agreement;

- (c) “apprenticeship standard” means the standard published by the Secretary of State in connection with the Government arrangements known as Trailblazer Apprenticeships, which applies as respects the work done under the agreement.

### **Pay reference period**

6. A “pay reference period”(21) is a month, or in the case of a worker who is paid wages by reference to a period shorter than a month, that period.

## **PART 3**

### **Calculation of the hourly rate**

#### **Calculation to determine whether the national minimum wage has been paid**

7. A worker is to be treated as remunerated by the employer in a pay reference period at the hourly rate determined by the calculation—

$$\frac{R}{H}$$

where—

“R” is the remuneration in the pay reference period determined in accordance with Part 4;

“H” is the hours of work in the pay reference period determined in accordance with Part 5.

## **PART 4**

### **Remuneration for the Purposes of the National Minimum Wage**

#### **Remuneration in a pay reference period**

8. The remuneration in the pay reference period is the payments from the employer to the worker as respects the pay reference period, determined in accordance with Chapter 1, less reductions determined in accordance with Chapter 2.

### **CHAPTER 1**

#### **Payments from the employer to the worker**

#### **Payments as respects the pay reference period**

9.—(1) The following payments and amounts, except as provided in regulation 10, are to be treated as payments by the employer to the worker as respects the pay reference period—

- (a) payments paid by the employer to the worker in the pay reference period (other than payments required to be included in an earlier pay reference period in accordance with sub-paragraphs (b) or (c));
- (b) payments paid by the employer to the worker in the following pay reference period as respects the pay reference period (whether as respects work or not);

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(21) This is the period prescribed for the purpose of section 1(4) of the Act.

- (c) payments paid by the employer to the worker later than the following pay reference period where the requirements in paragraph (2) are met;
  - (d) where a worker's contract terminates then as respects the worker's final pay reference period, payments paid by the employer to the worker in the period of a month beginning with the day after that on which the contract was terminated;
  - (e) amounts determined in accordance with regulation 16 (amount for provision of living accommodation) where—
    - (i) the employer has provided the worker with living accommodation during the pay reference period, and
    - (ii) as respects that provision of living accommodation, the employer is not entitled to make a deduction from the worker's wages or to receive a payment from the worker.
- (2) The requirements are that as respects the work in the pay reference period—
- (a) the worker is under an obligation to complete a record of the amount of work done,
  - (b) the worker is not entitled to payment until the completed record has been given to the employer,
  - (c) the worker has failed to give the record to the employer before the fourth working day before the end of that following pay reference period, and
  - (d) the payment is paid in either the pay reference period in which the record is given to the employer or the pay reference period after that.

### **Payments and benefits in kind which do not form part of a worker's remuneration**

- 10.** The following payments and benefits in kind do not form part of a worker's remuneration—
- (a) payments by way of an advance under an agreement for a loan or by way of an advance of wages;
  - (b) payment of a pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office;
  - (c) payment of an award made by a court or tribunal or a payment to settle proceedings which have been or might be brought before a court or tribunal, other than the payment of an amount due under the worker's contract;
  - (d) payments referable to the worker's redundancy;
  - (e) payment of an award for a suggestion made by the worker under a scheme established by the employer to reward suggestions made by workers;
  - (f) benefits in kind provided to the worker, whether or not a monetary value is attached to the benefit, other than living accommodation;
  - (g) a voucher, stamp or similar document capable of being exchanged for money, goods or services (or for any combination of those things);
  - (h) payments as respects hours which are not, or not treated as—
    - (i) hours of time work in accordance with regulation 35 (absences, industrial action, rest breaks),
    - (ii) hours of output work in accordance with regulation 40 (industrial action), or
    - (iii) hours of unmeasured work in accordance with regulation 48 (industrial action);
  - (i) payments, in the context of salaried hours work, attributable to the hours to be reduced under regulation 23 (worker entitled to less than normal proportion of annual salary because of absence) whether directly or by reason of regulation 28(3) (where the worker works more than the basic hours);

- (j) payments paid by the employer to the worker as respects hours of time work or output work in the pay reference period if—
  - (i) there is a lower rate per hour which could be payable under the contract as respects that work (including if the work was done at a different time or in different circumstances), and
  - (ii) to the extent that such payments exceed the lowest rate;
- (k) payments paid by the employer to the worker attributable to a particular aspect of the working arrangements or to working or personal circumstances that are not consolidated into the worker's standard pay unless the payments are attributable to the performance of the worker in carrying out the work;
- (l) payments paid by the employer to the worker as respects the worker's expenditure in connection with the employment;
- (m) payments paid by the employer to the worker representing amounts paid by customers by way of a service charge, tip, gratuity or cover charge;
- (n) payments paid by the employer to the worker as respects travelling expenses that are allowed as deductions from earnings under section 338 of the Income Tax (Earnings and Pensions) Act 2003(22).

## CHAPTER 2

### Reductions

#### **Determining the reductions which reduce the worker's remuneration**

11.—(1) In regulation 8, the reductions in the pay reference period are determined by adding together all of the payments or deductions treated as reductions in that period in accordance with this Chapter.

(2) To the extent that any payment or deduction is required to be subtracted by virtue of more than one provision in this Chapter, it is to be subtracted only once.

#### **Deductions or payments for the employer's own use and benefit**

12.—(1) Deductions made by the employer in the pay reference period, or payments due from the worker to the employer in the pay reference period, for the employer's own use and benefit are treated as reductions except as specified in paragraph (2) and regulation 14 (deductions or payments as respects living accommodation).

(2) The following deductions and payments are not treated as reductions—

- (a) deductions, or payments, in respect of the worker's conduct, or any other event, where the worker (whether together with another worker or not) is contractually liable;
- (b) deductions, or payments, on account of an advance under an agreement for a loan or an advance of wages;
- (c) deductions, or payments, as respects an accidental overpayment of wages made by the employer to the worker;
- (d) deductions, or payments, as respects the purchase by the worker of shares, other securities or share options, or of a share in a partnership;
- (e) payments as respects the purchase by the worker of goods or services from the employer, unless the purchase is made in order to comply with a requirement imposed by the employer in connection with the worker's employment.

### **Deductions or payments as respects a worker's expenditure**

13. The following deductions and payments are to be treated as reductions if the deduction or payment is paid by or due from the worker in the pay reference period—

- (a) deductions made by the employer, or payments paid by or due from the worker to the employer, as respects the worker's expenditure in connection with the employment;
- (b) payments to any person (other than the employer) on account of the worker's expenditure in connection with the employment unless the expenditure is met, or intended to be met, by a payment paid to the worker by the employer.

### **Deductions or payments as respects living accommodation**

14.—(1) The amount of any deduction the employer is entitled to make, or payment the employer is entitled to receive from the worker, as respects the provision of living accommodation by the employer to the worker in the pay reference period, as adjusted, where applicable, in accordance with regulation 15, is treated as a reduction to the extent that it exceeds the amount determined in accordance with regulation 16, unless the payment or deduction falls within paragraph (2).

(2) The following payments and deductions are not treated as reductions—

- (a) payments made to or deductions by a Higher Education Institution, Further Education Institution or a 16 to 19 Academy<sup>(23)</sup> in respect of the provision of living accommodation where the living accommodation is provided to a worker who is enrolled on a full-time higher education course or a full-time further education course at that Higher Education Institution or Further Education Institution or on a full-time course provided by that 16 to 19 Academy;
- (b) payments made to or deductions by a local housing authority or a registered social landlord in respect of the provision of living accommodation, except where the living accommodation is provided to the worker in connection with the worker's employment with the local housing authority or registered social landlord.

(3) For the purposes of this regulation—

“further education institution” means an institution within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992<sup>(24)</sup>;

“higher education institution” means an institution within the higher education sector as defined by section 91(5) of the Further and Higher Education Act 1992;

“local housing authority” means—

- (a) in England and Wales, a local housing authority, as defined in Part 1 of the Housing Act 1985<sup>(25)</sup>, or a county council in England;
- (b) in Scotland, a local authority landlord as defined in section 11(3) of the Housing (Scotland) Act 2001<sup>(26)</sup>;
- (c) in Northern Ireland, the Northern Ireland Housing Executive;

“registered social landlord” means—

- (d) in England and Wales—

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<sup>(23)</sup> A “16 to 19 Academy” is defined in section 1B of the Academies Act 2010 (c.32), which was inserted by the Education Act 2011 (c.21), section 53(7).

<sup>(24)</sup> 1992 c.13; subsections (3)(c) and (3A) of section 91(3) were inserted by Apprenticeships, Skills, Children and Learning Act 2009, Schedule 8, paragraph 13.

<sup>(25)</sup> 1985 c.68; “local housing authority” is defined by section 1 and 2(2) of that Act; section 1 was amended by the Local Government (Wales) Act 1994 (c.19), section 22(2) and Schedule 8, paragraph 5.

<sup>(26)</sup> 2001 asp 10.



- (i) a private registered provider of social housing or a subsidiary or associate of such a provider, as defined in Part 2 of the Housing and Regeneration Act 2008(27), or
- (ii) a social landlord registered under Part 1 of the Housing Act 1996(28) or a subsidiary or associate of such a person as defined in that Act(29);
- (e) in Scotland, a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010(30);
- (f) in Northern Ireland, a housing association registered under Chapter II of Part II of the Housing (Northern Ireland) Order 1992(31).

### **Deductions or payments as respects living accommodation adjusted for absences**

15.—(1) The amount referred to in regulation 14 is to be adjusted in accordance with paragraph (2) if, in the pay reference period, a worker is absent from work and all of the following conditions are met—

- (a) the worker would be required to do time work but for the absence;
- (b) the worker is paid, for the hours of work during which the worker was absent, an amount not less than that which the worker would have been entitled to under these Regulations but for the absence;
- (c) the hours of work in the pay reference period are, by reason of the absence, less than they would be in a pay reference period containing the same number of working days in which the worker worked without reduced hours and for no additional hours;
- (d) the amount of the deduction or payment the employer is entitled to make or receive in respect of the provision of living accommodation to the worker during the pay reference period does not increase by reason of the worker’s absence from work.

(2) The amount is adjusted by the formula—

$$\frac{(A \times B)}{C}$$

where—

“A” is the amount of the deduction the employer is entitled to make or payment the employer is entitled to receive in respect of the provision of living accommodation by the employer to the worker during the pay reference period;

“B” is the number of hours of time work determined in accordance with Part 5;

“C” is the number of hours of work the worker would have worked in the pay reference period (including the hours of work actually worked) but for the absence.

(27) 2008 c.17; “registered provider of social housing” is defined by section 80 of that Act, subsection (3) of which was inserted by S.I. 2010/844 Schedule.1 para.5; “subsidiary” and “associate” are defined in section 271 of that Act.

(28) 1996 c.52; Part I was amended by the Government of Wales Act 1998 (c.38), Schedules 16 and 18; the Land Registration Act 2002 (c.9), Schedule 13; the Housing Act 2004 (c.34), section 199 and 200; the Housing and Regeneration Act 2008 (c.17), section 61 to 63, 307 and Schedule 16; S.I. 2009/1941, S.I. 2001/3649, S.I. 2013/496, S.I. 2010/866; the title of Part I was amended by the Housing (Wales) Measure 2011 (c.5), Schedule 1, paragraph 2; Part I was modified by the Housing and Regeneration Act 2008, section 179.

(29) “associate” and “subsidiary” are defined by sections 60 and 61 of the Housing Act 1996, which were amended by the Co-operative and Community Benefit Societies Act 2014 (c.14), Schedule 4, paragraphs 56, 62 and 63, and S.I. 2009/1941, Schedule 1, paragraph 161(7).

(30) 2010 asp 17.

(31) S.I. 1992/1725 (N.I.15); Article 20 was amended, Article 21 to 21C were substituted for Article 21, and words were inserted in Article 23(2), by the Housing (Amendment) Act (Northern Ireland) 2011 (c.22) (N.I.), section 6, section 7 and Schedule 1, paragraph 1; Article 29 was amended by S.I. 2007/2194; Articles 23 and Articles 27 to 29 were amended by S.I. 2009/1941.

## CHAPTER 3

### Accommodation Offset Amount

#### **Amount for provision of living accommodation**

16.—(1) In regulations 9(1)(e), 14 and 15, the amount as respects the provision of living accommodation is the amount resulting from multiplying the number of days in the pay reference period for which accommodation was provided by £5.08.

(2) Living accommodation is provided for a day only if it is provided for the whole of a day.

(3) Amounts required to be determined in accordance with paragraph (1) as respects a pay reference period are to be determined in accordance with the regulations as they are in force on the first day of that period.

## PART 5

### Hours Worked for the Purposes of the National Minimum Wage

#### CHAPTER 1

##### Determining the Hours of Work

#### **Hours of work for determining whether the national minimum wage has been paid**

17. In regulation 7 (calculation to determine whether the national minimum wage has been paid), the hours of work in the pay reference period are the hours worked or treated as worked by the worker in the pay reference period as determined—

- (a) for salaried hours work, in accordance with Chapter 2;
- (b) for time work, in accordance with Chapter 3;
- (c) for output work, in accordance with Chapter 4;
- (d) for unmeasured work, in accordance with Chapter 5.

#### **Hours where payment due on submission of a record**

18. If the worker is only entitled to payment for hours of work when a record of the hours has been given to the employer, then the hours of work in the pay reference period do not include hours of work in respect of which that record has not been submitted.

#### **Hours spent training**

19.—(1) In this Part, references to “training” include hours when the worker is—

- (a) attending at a place other than the worker’s normal place of work, when the worker would otherwise be working, for the purpose of receiving training that has been approved by the employer;
- (b) travelling, when the worker would otherwise be working, between a place of work and a place where the worker receives such training;
- (c) receiving such training at the worker’s normal place of work.

(2) In paragraph (1), hours when the worker would “otherwise be working” include any hours when the worker is attending at a place or travelling where it is uncertain whether the worker would

otherwise be working because the worker's hours of work vary either as to their length or in respect of the time at which they are performed.

### **Hours spent travelling**

- 20.** In this Part, references to “travelling” include hours when the worker is—
- (a) in the course of a journey by a mode of transport or is making a journey on foot;
  - (b) waiting at a place of departure to begin a journey by a mode of transport;
  - (c) waiting at a place of departure for a journey to re-commence either by the same or another mode of transport, except for any time the worker spends taking a rest break; or
  - (d) waiting at the end of a journey for the purpose of carrying out duties, or to receive training, except for any time the worker spends taking a rest break.

## **CHAPTER 2**

### **Salaried hours work**

#### **The meaning of salaried hours work**

**21.**—(1) “Salaried hours work” is work which is done under a worker's contract and which meets the conditions in paragraphs (2) to (5) of this regulation.

(2) The first condition is that the worker is entitled under their contract to be paid an annual salary or an annual salary and performance bonus.

(3) The second condition is that the worker is entitled under their contract to be paid that salary or salary and performance bonus in respect of a number of hours in a year, whether those hours are specified in or ascertained in accordance with their contract (“the basic hours”).

(4) The third condition is that the worker is not entitled under their contract to a payment in respect of the basic hours other than an annual salary or an annual salary and performance bonus.

(5) The fourth condition is that the worker is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week or month—

- (a) in equal weekly or monthly instalments, or
- (b) in monthly instalments that vary but have the result that the worker is entitled to be paid an equal amount in each quarter.

(6) Circumstances where it may not be practicable to pay a worker by equal instalments, or by an equal amount in each quarter, include where—

- (a) a performance bonus is awarded;
- (b) the annual salary is varied;
- (c) a payment is made in respect of hours in addition to basic hours; or
- (d) the employment starts or terminates during a week or month with the result that the worker is paid a proportionate amount of their annual salary for that week or month.

(7) Work may be salaried hours work whether or not—

- (a) all the basic hours are working hours;
- (b) the worker works hours in excess of the basic hours (whether the worker is entitled to be paid for those additional hours or not);
- (c) the annual salary may be reduced due to an absence from work.

(8) A “performance bonus” is a payment paid to a worker on merit attributable to the quality or amount of work done in the course of more than one pay reference period.

### **Determining hours of salaried hours work in a pay reference period**

**22.**—(1) The hours of salaried hours work in a pay reference period are to be calculated in accordance with the following paragraphs.

(2) Where the pay reference period is a week, the hours of salaried hours work in that period are the basic hours divided by 52.

(3) Where the pay reference period is a month, the hours of salaried hours work in that period are the basic hours divided by 12.

(4) Where the pay reference period is any other period, the hours of salaried hours work in that period are the basic hours divided by the figure obtained by dividing 365 by the number of days in the pay reference period.

(5) The basic hours are to be ascertained in accordance with the worker's contract on the first day of the pay reference period in question unless paragraphs (6) or (7) apply.

(6) The hours of salaried hours work in a pay reference period are to be ascertained in accordance with regulations 24 to 28 if the worker—

- (a) during or before the payment reference period, works additional hours in excess of the basic hours in the calculation year, and
- (b) is not entitled to be paid more than annual salary and a performance bonus for those additional hours.

(7) The hours of salaried hours work in a pay reference period are to be determined in accordance with regulation 29 if the employment terminates before the end of the calculation year or the contract is varied before the end of the calculation year so that it is no longer a contract for salaried hours work.

### **Absences from work to be reduced from the salaried hours work in a pay reference period**

**23.**—(1) The hours a worker is absent from work are to be subtracted from the hours of salaried hours work in a pay reference period if all of the following conditions are met—

- (a) the employer is entitled under the worker's contract to reduce the annual salary due to the absence;
- (b) the employer pays the worker less than the normal proportion of annual salary in the pay reference period as a result of the absence.

(2) The hours during which a worker takes industrial action are to be subtracted from the hours of salaried hours work in a pay reference period if an annual salary was payable for those hours, or would have been payable but for the industrial action.

### **The meaning of the calculation year**

**24.**—(1) In this Chapter, “the calculation year” has the meaning given in the following paragraphs.

(2) For a worker who commenced the employment before 1st April 1999, then for so long as the worker continues in that employment the calculation year is a year beginning on an anniversary of the commencement of that employment.

(3) For a worker whose annual salary is payable monthly and who commenced the employment after 31st March 1999, then for so long as the worker continues in that employment—

- (a) if the worker commenced employment on the first day of a month, the calculation year is—
  - (i) the year beginning with that day;
  - (ii) in each subsequent year, a year beginning on an anniversary of that day;

(b) if the worker commenced employment on any other day of a month, the calculation year is—

- (i) the period beginning with that day and ending with the day before the first anniversary of the first day of the next month;
- (ii) in each subsequent year, a year beginning on an anniversary of the first day of that month.

(4) For a worker whose annual salary is payable weekly and who commenced the employment after 31st March 1999, then for so long as the worker continues in that employment the calculation year is—

- (a) the year beginning with the first day of employment;
- (b) in each subsequent year, a year beginning on an anniversary of that day.

### **Determining the basic hours in the calculation year**

**25.**—(1) In this Chapter, the basic hours in a calculation year are determined in accordance with the following paragraphs.

(2) The basic hours in the calculation year are the basic hours ascertained in accordance with the contract at the start of the calculation year, unless there is a variation to the basic hours which takes effect in the calculation year.

(3) Where a variation to the basic hours takes effect in the calculation year, the basic hours in the calculation year are determined by adding together—

- (a) the proportion of basic hours in the calculation year in the period starting before the day during which the variation takes effect, and
- (b) the proportion of basic hours in the calculation year in the period after the day during which the variation takes effect until the end of the calculation year.

(4) If more than one contractual variation takes effect in the calculation year, the “basic hours in the calculation year” are determined by adding together—

- (a) the proportion of basic hours in the calculation year in the period starting before the day during which the first variation takes effect, and
- (b) for each variation, the proportion of basic hours in the calculation year in the period after the day during which the variation takes effect and before the day during which the next variation takes effect or, in the case of the final variation, the end of the calculation year.

(5) The proportion of basic hours in the calculation year for each of the periods in paragraphs (3) and (4) is calculated using the formula—

$$\left( \frac{D}{365} \right) \times H$$

where—

“D” means the number of days in the period;

“H” means the basic hours in the calculation year which have effect in that period.

### **Determining whether the worker works more than the basic hours in the calculation year**

**26.**—(1) For the purposes of this regulation and regulations 22(6) and 28, a worker works more than the basic hours in a calculation year if all of the following hours added together are more than the basic hours in a calculation year—

- (a) hours worked which form part of the basic hours in the calculation year;

- (b) hours when the worker was absent from work which form part of the basic hours in the calculation year;
  - (c) hours worked in the calculation year which do not form part of the basic hours in the calculation year in respect of which the worker had no entitlement under their contract to a payment other than annual salary or annual salary and a performance bonus;
  - (d) hours treated as worked in accordance with regulation 27 to the extent that such hours consist of hours in respect of which the worker had no entitlement under their contract to a payment other than annual salary or annual salary and a performance bonus.
- (2) Hours during which the worker was taking part in industrial action are not to be included in sub-paragraphs (a) to (d).

**Hours treated as worked for the purpose of determining whether the worker works more than the basic hours in the calculation year and, where the worker does, the number of salaried hours work in that year**

27.—(1) The hours listed in sub-paragraphs (a) to (c) are treated as worked for the purposes of determining whether the worker works more than the basic hours in the calculation year (in accordance with regulation 26(1)(d)) and, where the worker does, the number of hours of salaried hours work in that year (in accordance with regulation 28)—

- (a) hours a worker spends training when the worker would otherwise be working;
- (b) hours a worker is available at or near a place of work for the purposes of working, unless the worker is at home;
- (c) hours a worker spends travelling for the purposes of working, when the worker would otherwise be working, unless the travelling is between—
  - (i) the worker’s home, or a place where the worker is temporarily residing other than for the purposes of working, and
  - (ii) a place of work or a place where an assignment is carried out.

(2) In paragraph (1)(b), hours when a worker is available only includes hours when the worker is awake for the purposes of working, even if a worker is required to sleep at or near a place of work and the employer provides suitable facilities for sleeping.

(3) In paragraph (1)(c), hours treated as hours when the worker would otherwise be working include—

- (a) hours when the worker is travelling for the purpose of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer;
- (b) hours when the worker is travelling where it is uncertain whether the worker would otherwise be working because the worker’s hours of work vary either as to their length or in respect of the time at which they are performed.

**Determining hours of salaried hours work if the worker works more than the basic hours in the calculation year**

28.—(1) If, in a pay reference period, a worker has worked more than the basic hours in the calculation year, the hours of salaried hours work in that pay reference period are calculated by adding together all of the following hours—

- (a) the proportion of basic hours attributable to the part of the pay reference period starting before the day during which the worker worked more than the basic hours in the calculation year;

- (b) the proportion of basic hours attributable to the part of the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year;
- (c) the number of hours actually worked in the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year;
- (d) the number of hours treated as worked, in accordance with regulation 27, in the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year.

(2) In paragraph (1)(a) and (b), each proportion of basic hours in the pay reference period is calculated using the formula—

$$\left(\frac{D}{365}\right) \times H$$

where—

“D” means the number of days in the part of the pay reference period referred to in paragraph (1)(a) or (b);

“H” means the basic hours in the calculation year.

(3) Reductions from the basic hours in the calculation year for absences, in accordance with regulation 23, must only be made from the proportion of basic hours determined under paragraph (1) (a).

(4) For each pay reference period in the calculation year after the pay reference period in which the worker worked more than the basic hours, the number of hours of salaried hours work are calculated by adding together all of the following hours—

- (a) the number of hours of salaried hours work in the pay reference period determined in accordance with regulation 22(2) to (4);
- (b) the number of hours actually worked in the pay reference period;
- (c) the number of hours treated as worked in the pay reference period in accordance with regulation 27.

(5) Regulation 23 (absences from work to be reduced from the hours of salaried hours work in a pay reference period) does not apply to the calculation in paragraph (4)(a).

**Hours of salaried hours work if the employment terminates before the end of the calculation year (or contract is varied so it is no longer a contract for salaried hours work)**

**29.**—(1) Where the employment terminates before the end of a calculation year the hours of salaried hours work in the final pay reference period are calculated in accordance with the following paragraphs.

(2) Where the worker does not work more than basic hours in the calculation year, the hours of salaried hours work in the final pay reference period are the sum of the following—

- (a) the number of hours of salaried hours work in the pay reference period calculated in accordance with regulation 22(2) to (4), and
- (b) the number of hours (if any) by which A exceeds B where—
  - “A” is the number of hours determined in accordance with regulation 26; and
  - “B” is the total of the number of hours of salaried hours work determined in accordance with regulation 22(2) to (4) in respect of all pay reference periods (including the final pay reference period) since the beginning of the calculation year.

(3) Where the worker works more than the basic hours in the calculation year, the hours of salaried hours work in the final pay reference period are the sum of the following—

- (a) the number of hours determined in accordance with regulation 28, and
  - (b) the number of hours of salaried hours work calculated in accordance with regulation 22(2) to (4) for the period beginning on the day following the last day of the final pay reference period and ending at the end of the calculation year as if—
    - (i) it was a single pay reference period (containing that number of days), and
    - (ii) the worker had remained employed until the end of the calculation year without any absences.
- (4) If a contract for salaried hours work is varied with the effect that it is no longer a contract for salaried hours work, this regulation is to apply as if the employment of the worker had been terminated and the last day of the worker’s final pay reference period had fallen on the day before the day on which the variation took effect.

## CHAPTER 3

### Time work

#### **The meaning of time work**

**30.** Time work is work, other than salaried hours work, in respect of which a worker is entitled under their contract to be paid—

- (a) by reference to the time worked by the worker;
- (b) by reference to a measure of output in a period of time where the worker is required to work for the whole of that period; or
- (c) for work that would fall within sub-paragraph (b) but for the worker having an entitlement to be paid by reference to the period of time alone when the output does not exceed a particular level.

#### **Determining hours of time work in a pay reference period**

**31.** The hours of time work in a pay reference period are the total number of hours of time work worked by the worker or treated under this Chapter as hours of time work in that period.

#### **Time work where worker is available at or near a place of work**

**32.**—(1) Time work includes hours when a worker is available, and required to be available, at or near a place of work for the purposes of working unless the worker is at home.

(2) In paragraph (1), hours when a worker is “available” only includes hours when the worker is awake for the purposes of working, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.

#### **Training treated as hours of time work**

**33.** The hours a worker spends training, when the worker would otherwise be doing time work, are treated as hours of time work.

#### **Travelling treated as hours of time work**

**34.**—(1) The hours when a worker is travelling for the purposes of time work, where the worker would otherwise be working, are treated as hours of time work unless the travelling is between—

- (a) the worker’s home, or a place where the worker is temporarily residing other than for the purposes of working, and



- (b) a place of work or a place where an assignment is carried out.
- (2) In paragraph (1), hours treated as hours when the worker would “otherwise be working” include—
  - (a) hours when the worker is travelling for the purpose of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer;
  - (b) hours when the worker is travelling where it is uncertain whether the worker would otherwise be working because the worker’s hours of work vary either as to their length or in respect of the time at which they are performed.

### **Hours not treated as time work**

- 35.**—(1) The hours a worker is absent from work are not treated as hours of time work, except as specified in regulations 32 to 34.
- (2) The hours a worker spends taking part in industrial action are not hours of time work.
  - (3) The hours a worker spends taking a rest break are not hours of time work.
  - (4) A worker is not to be treated as taking a rest break during hours which, in accordance with regulation 34, are treated as hours of time work.

## **CHAPTER 4**

### **Output work**

#### **The meaning of output work**

**36.** Output work is work, other than time work, in respect of which a worker is entitled under their contract to be paid by reference to a measure of output by the worker, including a number of pieces made or processed, or a number of tasks performed.

#### **Determining hours of output work in a pay reference period**

- 37.** The hours of output work in a pay reference period are the total number of hours—
- (a) of rated output work which the worker is treated as working in that period as determined in accordance with regulation 43.
  - (b) of output work in that period which is not rated output work; and
  - (c) treated as hours of output work in that period as determined in accordance with regulations 38 and 39.

#### **Training treated as hours of output work**

**38.** The hours when a worker is training, if the worker would otherwise be doing output work, are treated as hours of output work.

#### **Travelling treated as hours of output work**

- 39.**—(1) The hours when a worker is travelling for the purposes of output work are treated as hours of output work unless the travelling is between—
- (a) the worker’s home, or place where the worker is temporarily residing, and
  - (b) the place of work or, except as mentioned in paragraph (2), premises at which the worker reports.

(2) If a worker does output work at home or a place where the worker is temporarily residing the hours when a worker is travelling between that place and premises at which the worker reports are to be treated as hours of output work.

### **Industrial action not treated as output work**

**40.** The hours when a worker is taking part in industrial action are not to be treated as hours of output work.

### **Requirements for rated output work**

**41.**—(1) In this Chapter, output work is “rated output work” if all of the following requirements are met—

- (a) there are no minimum or maximum working hours in the worker’s contract in relation to the output work;
  - (b) the employer does not determine or control the hours actually worked in relation to the output work;
  - (c) the employer has determined the average hourly output rate in accordance with regulation 42;
  - (d) a notice which satisfies the requirements in paragraph (2) is given to the worker.
- (2) The requirements are—
- (a) the notice was given to the worker before the beginning of the pay reference period (whether or not it was given before or had effect in relation to earlier pay reference periods), and
  - (b) the notice conveys all of the following information in writing—
    - (i) that for the purposes of these Regulations the worker is to be treated as working for a certain period of time;
    - (ii) the employer has conducted a test or made an estimate of the average speed at which workers do the work to determine the period of time the worker is to be treated as working;
    - (iii) what the average hourly output rate is for the output;
    - (iv) the rate to be paid to the worker for a single measure of output;
    - (v) the telephone number for the Secretary of State’s helpline for workers and employers on workers’ pay and rights at work as published, from time to time, by the Secretary of State.

### **The meaning of average hourly output rate (rated output work)**

**42.**—(1) In this Chapter, the “average hourly output rate” is the mean number (including any fraction) of the measure of output per hour.

- (2) To determine the average hourly output rate the employer must either—
  - (a) conduct a test which satisfies the requirements in paragraph (3); or
  - (b) make an estimate of the mean speed the output work is done which satisfies the requirements in paragraph (4).
- (3) The requirements are—
  - (a) the test is conducted on—
    - (i) all the employer’s workers who do the output work, or

- (ii) a sample of those workers which, as respects the speed, is representative of the worker's work as respects that measure of output;
  - (b) the test is conducted in similar physical conditions to those in which the worker will be doing the work; and
  - (c) the total output per hour during the test is divided by the number of workers tested.
- (4) The requirements are—
- (a) a test is conducted on a sample of the employer's workers which is, so far as reasonably practicable, representative as respects the speed at which they work, of the speed at which the workers who produce the measure of output work;
  - (b) that test is carried out in relation to work which—
    - (i) is reasonably similar to the output work and was done in similar physical conditions to those of the worker, or
    - (ii) is the same as the output work but was done in different physical conditions to those of the worker; and
  - (c) the average speed is reasonably adjusted to take into account the likely difference in time involved in the worker doing the output work in the worker's physical conditions in comparison to the test which was carried out.
- (5) If there are changes in the number or identity of workers who do the output work, the employer is not required to conduct a further test or make a further estimate unless the employer has reason to believe that the changes materially affect the average hourly output rate.

#### **Determining hours of rated output work in a pay reference period**

**43.** Where output work is rated output work, the time spent by the worker doing the output work during the pay reference period is 120 per cent of the number of hours that a worker, doing the work at the average hourly output rate, would have taken to produce the same measure of output in that period.

### CHAPTER 5

#### Unmeasured work

#### **The meaning of unmeasured work**

**44.** Unmeasured work is any other work that is not time work, salaried hours work or output work.

#### **Determining hours of unmeasured work in a pay reference period**

- 45.** The hours of unmeasured work in a pay reference period are the total number of hours—
- (a) which are worked (or treated as hours of unmeasured work in accordance with regulations 46 and 47) by the worker in that period; or
  - (b) which the worker is treated as working under a daily average agreement in that period, as determined in accordance with regulation 50.

#### **Training treated as hours of unmeasured work**

**46.** The hours when a worker is training, where the worker would otherwise be doing unmeasured work, are to be treated as hours of unmeasured work.

### **Travelling treated as hours of unmeasured work**

47. The hours when a worker is travelling for the purposes of unmeasured work are to be treated as hours of unmeasured work.

### **Industrial action not to be unmeasured work**

48. The hours when a worker takes part in industrial action are not to be treated as hours of unmeasured work.

### **The daily average agreement**

49.—(1) A “daily average agreement” is an agreement between a worker and employer—

- (a) which specifies the average daily number of hours the worker is likely to spend working where the worker is available to work for the full amount of time contemplated by the contract, and
- (b) is made in writing before the beginning of the pay reference period to which it relates.

(2) The requirement in paragraph (1)(a) is not satisfied unless the employer can show that the average daily number of hours specified is a reasonable estimate.

(3) Unless the worker and employer agree otherwise, the daily average agreement has effect solely for the purpose of determining the amount of unmeasured work the worker is to be treated as having worked for the purposes of these Regulations.

### **Determining the hours treated as worked under a daily average agreement**

50. The hours treated as worked under a daily average agreement for each day on which the worker worked in the pay reference period are—

- (a) where the worker was available to work for at least the full amount of time contemplated under the contract, the average daily number of hours specified in the daily average agreement;
- (b) where the worker was available to work for only part of the time contemplated by the contract, the proportion of the average daily number of hours specified in the daily average agreement which that part bears to the full amount of time contemplated under the contract.

## **PART 6**

### **Exclusions**

#### **Schemes for training, work experience, temporary work or for seeking or obtaining work**

51.—(1) A person who is participating in a scheme which meets the requirements in paragraph (2) does not qualify for the national minimum wage for work done as part of that scheme.

(2) The requirements are that the scheme—

- (a) is designed to provide training, work experience or temporary work, or to assist in the seeking or obtaining of work, and
- (b) is, in whole or in part, made or funded by—

- (i) the Secretary of State under section 2 of the Employment and Training Act 1973<sup>(32)</sup> or section 17B of the Jobseekers Act 1995<sup>(33)</sup>;
- (ii) the Scottish Ministers or the Welsh Ministers under section 2 of the Employment and Training Act 1973;
- (iii) the Chief Executive of Skills Funding;
- (iv) Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(34)</sup>;
- (v) the Department for Employment and Learning under section 1 of the Employment and Training Act (Northern Ireland) 1950<sup>(35)</sup>; or
- (vi) the European Social Fund established under Article 162 of the Treaty on the Functioning of the European Union<sup>(36)</sup>.

### Schemes for trial periods of work

52.—(1) A person who is participating in a trial period of work with an employer for a period of six weeks or less, as part of a scheme which meets the requirements in paragraph (2), does not qualify for the national minimum wage for the work done for that employer in that period.

(2) The requirements are that the scheme—

- (a) is designed to provide training, work experience or temporary work, or to assist in the seeking or obtaining of work, and
- (b) is, in whole or in part, made or funded by—
  - (i) the Secretary of State under section 2 of the Employment and Training Act 1973 or section 17B of the Jobseekers Act 1995;
  - (ii) the Scottish Ministers or the Welsh Ministers under section 2 of the Employment and Training Act 1973;
  - (iii) the Chief Executive of Skills Funding;
  - (iv) Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990;
  - (v) the Department for Employment and Learning under section 1 of the Employment and Training Act (Northern Ireland) 1950; or
  - (vi) the European Social Fund established under Article 162 of the Treaty on the Functioning of the European Union.

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<sup>(32)</sup> 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25; subsection (3A) and (3B) were inserted by the Trade Union Reform and Employment Rights Act 1993 (c.19), section 47; subsections (2) and (6) were repealed by the Employment Act 1989 (c.38), Schedule 7, paragraph 1. The powers under section 2 are exercisable by the Scottish Ministers concurrently with the Secretary of State by virtue of section 56(1)(g) of the Scotland Act 1998 (c.46). The powers under section 2 are exercisable by the Welsh Ministers concurrently with the Secretary of State by virtue of S.I. 1999/672 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

<sup>(33)</sup> 1995 c.18. Section 17B was inserted by the Welfare Reform Act 2009 (c.24), section 1.

<sup>(34)</sup> 1990 c.35 (S.); subsection (3)(b) and (c) and (4) of section 2 were amended, and subsection (3)(d) was inserted, by the Trade Union Reform and Employment Rights Act 1993 (c.19), section 47 and Schedule 10, paragraph 1; subsection (4)(a) was amended by the Equality Act 2010 (c.15), Schedule 26(1), paragraph 20; subsection (6) was amended by S.I. 1999/1820.

<sup>(35)</sup> 1950 c.29 (N.I.); the powers of the Department under section 1 were extended by S.I. 1974/2144 (N.I.7), article 7; subsection (1) to (1C) were substituted for subsections (1) and (1A) by S.I. 1988/1087 (N.I. 10); subsections (2) and (3) were amended by S.I. 1990/1200 (N.I. 8); section 1(1A)(d) was amended by the Employment Act (Northern Ireland) 2010 c.12 (N.I.), Schedule 1, paragraph 1.

<sup>(36)</sup> OJ No C83, 30.3.2010, p.47.

### Work experience as part of a higher or further education course

**53.** A person who undertakes a higher education course or further education course, and before the course ends is required, as part of that course, to attend a period of work experience not exceeding one year, does not qualify for the national minimum wage as respects work done for the employer as part of that course.

### Traineeships in England

**54.**—(1) A worker does not qualify for the national minimum wage for work done as part of that worker's participation in a traineeship in England to which paragraph (2) applies.

(2) This paragraph applies to a traineeship consisting of a skills programme which meets the following conditions—

- (a) the programme includes a work experience placement and work preparation training;
- (b) the programme lasts no more than six months;
- (c) the programme is government funded; and
- (d) the programme is open to persons who on the first day of the traineeship have attained the age of 16 but not 25 years old.

### Work schemes for provision of accommodation to the homeless

**55.**—(1) A worker, who meets the requirements in paragraph (2), does not qualify for the national minimum wage for work done for an employer, under a scheme which meets the requirements in paragraph (3), if the worker is provided with accommodation and other benefits (which may include money) under that scheme.

(2) The requirements are that immediately before entry into the scheme the worker was homeless or residing in a hostel for homeless persons and—

- (a) was in receipt of, or entitled to any of the following benefits—
  - (i) universal credit (payable under Part 1 of the Welfare Reform Act 2012**(37)**),
  - (ii) income support (payable under Part VII of the Social Security Contributions and Benefits Act 1992**(38)**),
  - (iii) income-based jobseeker's allowance (payable under Part I of the Jobseekers Act 1995**(39)**),

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**(37)** 2012 c.5.

**(38)** 1992 c.4; Part VII was amended by the Housing Act 1991 (c.52), Schedule 19; the Local Government Finance Act 1992 (c.14), Schedule 9 and Schedule 14; the Social Security (Incapacity for Work) Act 1994 (c.18), Schedules 1 and Schedule 2; the Local Government etc (Scotland) Act 1994 (c.39), Schedules 13 and 14; the Jobseekers Act 1995 (c.18), Schedule 2 and 3; the Housing Act 1996 (c.52), Schedule 19(6); the Welfare Reform and Pensions Act 1999 (c.30), Schedule 8(IV); the Health and Social Care Act 2001 (c.15), Schedule 6(3); the State Pension Credit Act 2002 (c.16), Schedule 2 and 3; the Tax Credits Act 2002 (c.21), Schedule 6; the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6; the Civil Partnership Act 2004 (c.33), Schedule 24(3) and Schedule 30; the Welfare Reform Act 2007 (c.5), Sections 30(2) and 31(1), Schedule 3, 5 and 8; the Welfare Reform Act 2009 (c.24), section 3; the Welfare Reform Act 2012 (c.5), section 69 and Schedule 14(1); S.I. 2002/1397; S.I. 2008/632; S.I.2009/497 and S.I. 2012/780; Part VII was repealed for certain purposes by the Welfare Reform Act 2012, schedule 14 and S.I.2013/358.

**(39)** 1995 c.18; Part I was amended by the Employment Rights Act 1996 (c.18), Schedule 1; the Social Security Act 1998 (c.14), Schedules 7 and 8; the Welfare Reform and Pensions Act 1999 (c.30), Schedules 1, 7, 8 and 13; the State Pension Credit Act 2002 (c.16), Schedule 2(3); the National Insurance Contributions Act 2002 (c.19), Schedule 1; the Income Tax (Earnings and Pensions) Act 2003 (c.18), Schedule 6; the Civil Partnership Act 2004 (c.33), Schedule 24(7) and S.I. 2006/343; the Welfare Reform Act 2007 (c.5), Schedule 3; the Welfare Reform Act 2009 (c.24), sections 1, 4, 12, 32 to 33, Schedule 2, Schedule 7(1), Schedule 7(3) and S.I. 2010/293; Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10), Schedule 24; Welfare Reform Act 2012 (c.5), sections 44, 46, 49, 61, Schedule 2, Schedule 5, Schedule 7, and Schedule 14(1) to (3); S.I. 2011/1498; Part I was modified by S.I. 2003/2438, S.I. 2006/962, S.I. 1998/2825, S.I. 2000/3134, S.I. 1995/3276, S.I. 1996/2567, S.I. 1996/3182, S.I. 2006/343, S.I. 1996/207 and S.I. 2013/378.

- (iv) income-related employment and support allowance (payable under Part 1 of the Welfare Reform Act 2007(40) or Part 1 of the Welfare Reform Act (Northern Ireland) 2007(41)); or
  - (b) was not entitled to receive any of those benefits only because the worker was not habitually resident in the United Kingdom.
- (3) The requirements for the scheme are as follows—
- (a) no one makes a profit out of the scheme other than—
    - (i) a profit only applied to running the scheme or other qualifying schemes, or
    - (ii) where the person operating the scheme is a charity, for a purpose of the charity relating to the alleviation of poverty;
  - (b) every person participating in the scheme satisfies the same requirements as for workers in paragraph (2) (although they need not all be workers);
  - (c) the accommodation available under the scheme is provided by the person operating the scheme or under arrangements made between that person and another person; and
  - (d) the work done under the scheme is both provided by, and performed for, the person operating the scheme.

### European Union programmes

56. A worker does not qualify for the national minimum wage for work that is done as a participant in any of the following programmes—

- (a) the second phase of the European Community Leonardo da Vinci programme (established pursuant to Council Decision 99/382/EC(42));
- (b) the European Community Leonardo da Vinci programme (established pursuant to Decision No 1720/2006/EC of the European Parliament and the Council of the European Union establishing an action programme in the field of lifelong learning(43));
- (c) the European Community Youth in Action Programme (established pursuant to Decision No 1719/2006/EC of the European Parliament and the Council of the European Union(44));
- (d) the European Community Erasmus Programme or Comenius Programme (both established pursuant to Decision No 1720/2006/EC of the European Parliament and the Council of the European Union establishing an action programme in the field of lifelong learning);
- (e) Erasmus+ established pursuant to Regulation (EU) No.1288/2013 of the European Parliament and of the Council of 11th December 2013 establishing ‘Erasmus+’: the Union programme for education, training, youth and sport(45).

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(40) 2007 c.5; Part I was amended by the Welfare Reform Act 2009 (c.24), sections 3, 10 and 28, and Schedule 3(2), and the Welfare Reform Act 2012 (c.5), sections 50 to 57 and 60, Schedules 3 and 14; Part I was modified by S.I. 2008/794, S.I. 2010/875, S.I. 2010/1907 and S.I. 2013/379.

(41) 2007 c.2 (N.I.); Part I was modified by S.I. 2010/312; Part I was amended by the Welfare Reform Act (Northern Ireland) 2010 (c.13)(N.I.), sections 3, 10, and 22.

(42) OJ L 146, 11/6/1999, p. 33, as amended by Council Regulation (EC) No 885/2004 (OJ L 168, 01/05/2004, p.1) and European Parliament and Council Regulation No 1882/2003 (OJ L 284, 31/10/2003, p.1).

(43) OJ L 327, 24/11/2006, p. 45, as amended by European Parliament and Council Decision No. 1357/2008/EC (OJ L 350, 30/12/2008, p.56).

(44) OJ L 327, 24/11/2006, p. 30, as amended by the Corrigendum (OJ L 337, 05/12/2006, p.68) and European Parliament and Council Decision No. 1349/2008/EC (OJ L 348, 24/12/2008, p.113).

(45) OJ L 347, 20.12.2013, p.50.

### **Work does not include work relating to family household**

57.—(1) In these Regulations, “work” does not include any work done by a worker in relation to an employer’s family household if the requirements in paragraphs (2) or (3) are met.

(2) The requirements are all of the following—

- (a) the worker is a member of the employer’s family;
- (b) the worker resides in the family home of the employer;
- (c) the worker shares in the tasks and activities of the family.

(3) The requirements are all of the following—

- (a) the worker resides in the family home of the worker’s employer;
- (b) the worker is not a member of that family, but is treated as such, in particular as regards to the provision of living accommodation and meals and the sharing of tasks and leisure activities;
- (c) the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, as respects the provision of the living accommodation or meals;
- (d) if the work had been done by a member of the employer’s family, it would not be treated as work or as performed under a worker’s contract because the requirements in paragraph (2) would be met.

### **Work does not include work relating to family business**

58. “Work” does not include any work done by a worker in relation to an employer’s family business if the worker—

- (a) is a member of the employer’s family,
- (b) resides in the family home of the employer, and
- (c) participates in the running of the family business.

## **PART 7**

### **Records**

#### **Records to be kept by an employer**

59.—(1) The employer of a worker who qualifies for the national minimum wage must keep in respect of that worker records sufficient to establish that the employer is remunerating the worker at a rate at least equal to the national minimum wage.

(2) The records required to be kept under paragraph (1) are to be in a form which enables the information kept about a worker in respect of a pay reference period to be produced in a single document.

(3) The employer of a worker who does unmeasured work, and with whom the employer has entered into a daily average agreement in accordance with regulation 49, must keep a copy of that agreement.

(4) The employer of a worker who does output work, and has given the worker a notice in accordance with regulation 41(1)(d), must keep a copy of that notice and a copy of such data as is necessary to show how the average hourly output rate has been determined.

(5) The employer of a worker who qualifies for an agricultural minimum rate of wages must, in addition to the records the employer is required to keep under paragraphs (1), (3), and (4), keep as



respects that worker sufficient records to establish that the employer is remunerating the worker at a rate at least equal to the agricultural minimum rate of wages applicable to the worker.

- (6) In paragraph (5), “agricultural minimum rate of wages” means—
- (a) in Wales, a minimum rate of wages fixed under section 4 of the Agricultural Sector (Wales) Act 2014;
  - (b) in Scotland, a minimum rate of wages fixed under section 3(1)(a) of the Agricultural Wages (Scotland) Act 1949;
  - (c) in Northern Ireland, a minimum rate of wages fixed under Article 4(1) of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977.

(7) Where under paragraph (5) an employer is required to keep records in respect of a worker in addition to those the employer is required to keep under paragraph (1), those additional records are to be in a form which enables the information kept under paragraph (5) about a worker in respect of a pay reference period to be produced in a single document.

(8) The records required to be kept by this regulation must be kept by the employer for a period of three years beginning with the day upon which the pay reference period immediately following that to which they relate ends.

- (9) The records required to be kept by this regulation may be kept by means of a computer.

	<i>Name</i>
	Title
Date	Department for Business, Innovation and Skills

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as  
a UK Statutory Instrument: The National Minimum Wage Regulations 2015 No. 621

## SCHEDULE

Regulation 2

## Revocations

(1)			(2)	(3)
<i>Regulations revoked</i>			<i>References</i>	<i>Extent of revocation</i>
National Minimum Wage Regulations 1999			<a href="#">S.I. 1999/584</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2000			<a href="#">S.I. 2000/1989</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2001			<a href="#">S.I. 2001/1108</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2001			<a href="#">S.I. 2001/2763</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2002			<a href="#">S.I. 2002/1999</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2003			<a href="#">S.I. 2003/1923</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2004			<a href="#">S.I. 2004/1161</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2004			<a href="#">S.I. 2004/1930</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2005			<a href="#">S.I. 2005/2019</a>	The whole Regulations
National Minimum Wage Regulations (Amendment) 2006			<a href="#">S.I. 2006/2001</a>	The whole Regulations
National Minimum Wage Regulations			<a href="#">S.I. 2007/2318</a>	The whole Regulations

(1)	(2)	(3)
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
(Amendment) Regulations 2007		
The Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008	<a href="#">S.I. 2008/1879</a>	Regulation 3
National Minimum Wage Regulations 1999 (Amendment) Regulations 2008	<a href="#">S.I. 2008/1894</a>	The whole Regulations
National Minimum Wage Regulations 1999 (Amendment) Regulations 2009	<a href="#">S.I. 2009/1902</a>	The whole Regulations
Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010	<a href="#">S.I. 2010/671</a>	Paragraph 23 of Schedule 1
National Minimum Wage Regulations 1999 (Amendment) Regulations 2010	<a href="#">S.I. 2010/1901</a>	The whole Regulations
National Minimum Wage (Amendment) (No. 2) Regulations 2010	<a href="#">S.I. 2010/3001</a>	The whole Regulations
National Minimum Wage (Amendment) Regulations 2011	<a href="#">S.I. 2011/2345</a>	The whole Regulations
National Minimum Wage (Amendment) (No.2) Regulations 2011	<a href="#">S.I. 2011/2347</a>	The whole Regulations
Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012	<a href="#">S.I. 2012/700</a>	Paragraph 11 of the Schedule
The Young People's Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012	<a href="#">S.I. 2012/956</a>	Regulation 7
Alternative Provision Academies and 16 to 19 Academies (Consequential Amendments to Subordinate Legislation) (England) Order 2012	<a href="#">S.I. 2012/979</a>	Paragraph 5 of the Schedule

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The National Minimum Wage Regulations 2015 No. 621

(1)	(2)	(3)
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
National Minimum Wage (Amendment) Regulations 2012	<a href="#">S.I. 2012/2397</a>	The whole Regulations
Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England and Wales) Order 2012	<a href="#">S.I. 2012/3112</a>	Regulation 2
National Minimum Wage (Amendment) Regulations 2013	<a href="#">S.I. 2013/1975</a>	The whole Regulations
National Minimum Wage (Amendment) Regulations 2014	<a href="#">S.I. 2014/546</a>	The whole Regulations
National Minimum Wage (Amendment) (No 2) Regulations 2014	<a href="#">S.I. 2014/2485</a>	The whole Regulations
National Minimum Wage (Amendment) (No 3) Regulations 2014	<a href="#">S.I. 2014/2832</a>	The whole Regulations

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations remake the National Minimum Wage Regulations 1999 ([S.I. 1999/584](#)) and consolidate the amendments made to those Regulations.

Part 1 contains a revocation provision (regulation 2) which, together with the Schedule, revokes the National Minimum Wage Regulations 1999 and amending instruments. Regulation 3 contains general interpretative provisions.

Part 2 sets the hourly rates of the national minimum wage. Regulation 5 sets out how to determine whether the apprenticeship rate applies to a worker. Regulation 6 prescribes the pay reference period for the Act and Regulations.

Part 3 (regulation 7) sets out the calculation to determine whether the national minimum wage has been paid. The remuneration paid by the employer in the pay reference period is divided by the hours of work in the same period to determine the hourly rate at which the worker is treated as remunerated. If the hourly rate is less than the applicable rate of the national minimum wage in the pay reference period, the worker has not been paid the national minimum wage.

Part 4 sets out how to determine the remuneration in the calculation in Part 3. The payments paid by the employer to the worker as respects the pay reference period, which form part of the remuneration, are set out in Chapter 1. The reductions which are to be subtracted from the payments to determine the remuneration are set out in Chapter 2. The amount for the provision of living accommodation is determined in accordance with Chapter 3. That amount may be treated as a payment, if the living accommodation is provided free of charge, in regulation 9, or, if living accommodation is provided by the employer for a fee, the extent of deductions by the employer or payments from the worker for that living accommodation is limited in accordance with regulation 14 (as adjusted, where applicable, for absences in accordance with regulation 15).

Part 5 sets out how to determine the hours of work in the calculation in Part 3. The hours of work are the hours of salaried hours work (Chapter 2), time work (Chapter 3), output work (Chapter 4), or unmeasured work (Chapter 5) worked or treated as worked by the worker in the pay reference period.

Part 6 excludes persons from the national minimum wage if they are involved in prescribed government training schemes (regulations 51 and 52), work experience as part of a higher or further education course (regulation 53), certain traineeships in England (regulation 54), work schemes for provision of accommodation to the homeless (regulation 55), and certain European Community programmes (regulation 56). Regulations 57 provides that work done by members of the family, or those treated as members of the family, relating to the family household is not work. Regulation 58 provides that work done by members of the family, who reside in the family home, in relation to a family business is not work.

Part 7 (regulation 59) requires employers to keep records sufficient to establish that they are paying their workers at least the rate of the national minimum wage and any applicable agricultural minimum rate.

An impact assessment has not been prepared for this instrument as no significant impact on the private, voluntary or public sector is foreseen.