



National Minimum Wage Act 1998

1998 CHAPTER 39

VALID FROM 01/11/1998

The Low Pay Commission

5 The first regulations: referral to the Low Pay Commission.

- (1) Before making the first regulations under section 1(3) or (4) or 2 above, the Secretary of State shall refer the matters specified in subsection (2) below to the Low Pay Commission for their consideration.
- (2) Those matters are—
 - (a) what single hourly rate should be prescribed under section 1(3) above as the national minimum wage;
 - (b) what period or periods should be prescribed under section 1(4) above;
 - (c) what method or methods should be used for determining under section 2 above the hourly rate at which a person is to be regarded as remunerated for the purposes of this Act;
 - (d) whether any, and if so what, provision should be made under section 3 above; and
 - (e) whether any, and if so what, descriptions of person should be added to the descriptions of person to whom section 3 above applies and what provision should be made under that section in relation to persons of those descriptions.
- (3) Where matters are referred to the Low Pay Commission under subsection (1) above, the Commission shall, after considering those matters, make a report to the Prime Minister and the Secretary of State which shall contain the Commission's recommendations about each of those matters.
- (4) If, following the report of the Low Pay Commission under subsection (3) above, the Secretary of State decides—
 - (a) not to make any regulations implementing the Commission's recommendations, or

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- (b) to make regulations implementing only some of the Commission's recommendations, or
- (c) to prescribe under section 1(3) above a single hourly rate which is different from the rate recommended by the Commission, or
- (d) to make regulations which in some other respect differ from the recommendations of the Commission, or
- (e) to make regulations which do not relate to a recommendation of the Commission,

the Secretary of State shall lay a report before each House of Parliament containing a statement of the reasons for the decision.

- (5) If the Low Pay Commission fail to make their report under subsection (3) above within the time allowed for doing so under section 7 below, any power of the Secretary of State to make regulations under this Act shall be exercisable as if subsection (1) above had not been enacted.

6 Referral of matters to the Low Pay Commission at any time.

- (1) The Secretary of State may at any time refer to the Low Pay Commission such matters relating to this Act as the Secretary of State thinks fit.
- (2) Where matters are referred to the Low Pay Commission under subsection (1) above, the Commission shall, after considering those matters, make a report to the Prime Minister and the Secretary of State which shall contain the Commission's recommendations about each of those matters.
- (3) If on a referral under this section—
 - (a) the Secretary of State seeks the opinion of the Low Pay Commission on a matter falling within section 5(2) above,
 - (b) the Commission's report under subsection (2) above contains recommendations in relation to that matter, and
 - (c) implementation of any of those recommendations involves the exercise of any power to make regulations under sections 1 to 4 above,
 subsection (4) of section 5 above shall apply in relation to the report, so far as relating to the recommendations falling within paragraph (c) above, as it applies in relation to a report under subsection (3) of that section.

- (4) If on a referral under this section—
 - (a) the Secretary of State seeks the opinion of the Low Pay Commission on any matter falling within section 5(2) above, but
 - (b) the Commission fail to make their report under subsection (2) above within the time allowed under section 7 below,
 the Secretary of State may make regulations under sections 1 to 4 above as if the opinion of the Commission had not been sought in relation to that matter.

7 Referrals to, and reports of, the Low Pay Commission: supplementary.

- (1) This section applies where matters are referred to the Low Pay Commission under section 5 or 6 above.
- (2) The Secretary of State may by notice require the Low Pay Commission to make their report within such time as may be specified in the notice.

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- (3) The time allowed to the Low Pay Commission for making their report may from time to time be extended by further notice given to them by the Secretary of State.
- (4) Before arriving at the recommendations to be included in their report, the Low Pay Commission shall consult—
 - (a) such organisations representative of employers as they think fit;
 - (b) such organisations representative of workers as they think fit; and
 - (c) if they think fit, any other body or person.
- (5) In considering what recommendations to include in their report, the Low Pay Commission—
 - (a) shall have regard to the effect of this Act on the economy of the United Kingdom as a whole and on competitiveness; and
 - (b) shall take into account any additional factors which the Secretary of State specifies in referring the matters to them.
- (6) The report of the Low Pay Commission must—
 - (a) identify the members of the Commission making the report;
 - (b) explain the procedures adopted in respect of consultation, the taking of evidence and the receiving of representations;
 - (c) set out the reasons for their recommendations; and
 - (d) if the Secretary of State has specified any additional factor to be taken into account under subsection (5)(b) above, state that they have taken that factor into account in making their recommendations.
- (7) The Secretary of State shall—
 - (a) lay a copy of any report of the Low Pay Commission before each House of Parliament; and
 - (b) arrange for the report to be published.
- (8) In this section—

“recommendations” means the recommendations required to be contained in a report under section 5(3) or 6(2) above, as the case may be;

“report” means the report which the Low Pay Commission are required to make under section 5(3) or 6(2) above, as the case may be, on the matters referred to them as mentioned in subsection (1) above.

8 The Low Pay Commission.

- (1) Subject to the following provisions of this section, the body which is to be regarded for the purposes of this Act as being the Low Pay Commission is the non-statutory Low Pay Commission.
- (2) In this Act “the non-statutory Low Pay Commission” means the unincorporated body of persons known as “the Low Pay Commission” which was established by the Secretary of State after 1st May 1997 and before the passing of this Act for the purpose of making recommendations relating to the establishment, application and operation of a national minimum wage.
- (3) The referral by the Secretary of State to the non-statutory Low Pay Commission at any time before the coming into force of this Act of matters (however described) corresponding to those specified in subsection (2) of section 5 above shall be treated

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as the referral required by subsection (1) of that section unless the Secretary of State otherwise determines.

- (4) The referral by the Secretary of State to the non-statutory Low Pay Commission at any time before or after the coming into force of this Act, but before the appointment of the body mentioned in subsection (9) below, of matters other than those mentioned in subsection (3) above shall be treated as a referral under section 6(1) above unless the Secretary of State otherwise determines.
- (5) The report of the non-statutory Low Pay Commission (whether made before or after the coming into force of this Act) to the Prime Minister and the Secretary of State containing the Commission's recommendations about—
- (a) the matters which are to be treated by virtue of subsection (3) above as referred under section 5(1) above, or
 - (b) the matters which are to be treated by virtue of subsection (4) above as referred under section 6(1) above,
- shall be treated as the report of the Low Pay Commission under section 5(3) or 6(2) above, as the case may be, on the referral in question unless the Secretary of State, whether before or after the making of the report, makes a determination under subsection (3) or (4) above in relation to the referral.
- (6) If, in the case of the matters described in subsection (5)(a) above or any particular matters such as are described in subsection (5)(b) above, the Secretary of State has, before the coming into force of this Act,—
- (a) requested the non-statutory Low Pay Commission to make their report within a specified time, or
 - (b) having made such a request, extended the time for making the report,
- the request shall be treated as a requirement imposed under subsection (2) of section 7 above and any such extension shall be treated as an extension under subsection (3) of that section.
- (7) Accordingly, if—
- (a) the Secretary of State has not made a determination under subsection (3) above, and
 - (b) the non-statutory Low Pay Commission fail to make the report required by section 5(3) above within the time allowed under this Act,
- section 5(5) above applies.
- (8) The non-statutory Low Pay Commission shall not be regarded as the body which is the Low Pay Commission for the purposes of this Act in the case of any referral under section 5(1) or 6(1) above which is made after—
- (a) the non-statutory Low Pay Commission have made their report under section 5(3) above; or
 - (b) the time allowed under this Act to the non-statutory Low Pay Commission for making that report has expired without the report having been made; or
 - (c) the Secretary of State has made the determination under subsection (3) above.
- (9) The Secretary of State may at any time appoint a body, to be known as “the Low Pay Commission”, to discharge the functions conferred or imposed on the Low Pay Commission under this Act.

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- (10) Schedule 1 to this Act shall have effect with respect to the constitution and proceedings of the body appointed under subsection (9) above.
- (11) Where the Secretary of State exercises the power conferred by subsection (9) above, the body which is to be regarded for the purposes of this Act as being the Low Pay Commission as respects the referral of any matter to the Low Pay Commission by the Secretary of State after the exercise of the power is the body appointed under that subsection.
- (12) If the Secretary of State makes the determination under subsection (3) above, the power conferred by subsection (9) above must be exercised and the referral required by section 5(1) above must be made to the body appointed under subsection (9) above.
- (13) If the Secretary of State makes a determination under subsection (3) or (4) above—
 - (a) notice of the determination shall be given to the non-statutory Low Pay Commission; and
 - (b) a copy of the notice shall be laid before each House of Parliament.
- (14) No determination shall be made under subsection (3) or (4) above more than twelve months after the passing of this Act.

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