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STATUTORY INSTRUMENTS

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**1999 No. 584**

**The National Minimum Wage Regulations 1999**

**PART II**

**THE RATE OF THE NATIONAL MINIMUM WAGE**

*The rate and exclusions*

**Workers who do not qualify for the national minimum wage**

**12.**—(1) Workers who have not attained the age of 18 do not qualify for the national minimum wage.

(2) A worker who—

- (a) has not attained the age of 26,
- (b) is employed under a contract of apprenticeship or, in accordance with paragraph (3), is to be treated as employed under a contract of apprenticeship, and
- (c) is within the first 12 months after the commencement of that employment or has not attained the age of 19,

does not qualify for the national minimum wage in respect of work done for his employer under that contract.

(3) A worker is to be treated as employed under a contract of apprenticeship for the purposes of paragraph (2)(b) if, and only if, he is engaged under the arrangements made by the Government known as Modern Apprenticeships.

(4) For the purposes of paragraph (2)(c) a worker does not commence employment with an employer where he has previously been employed by another employer and continuity of employment is preserved between the two employments by or under any enactment.

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

- (a) a scheme, not being one falling within sub-paragraph (b), provided to him under arrangements made by the Government (other than arrangements falling within paragraph (3)), or
- (b) funded in whole or part under the European Social Fund,

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

(6) Paragraph (5) does not apply to a worker who is participating in a scheme falling within sub-paragraph (a) of paragraph (5) if he is employed by the employer for whom he works under the scheme, unless the worker is engaged, for a period not exceeding three weeks, in a trial period of work with a prospective employer under arrangements made by the Government.

(7) Paragraph (5) does not apply to an employee who is participating in a scheme falling within sub-paragraph (b) of paragraph (5) if he is employed by the employer for whom he works under the

scheme, unless the employee is engaged, for a period not exceeding three weeks, in a trial period of work with a prospective employer under arrangements made by the Government.

- (8) A worker who—
- (a) is attending a higher education course—
    - (i) the standard of which is not higher than that of a first degree course, or
    - (ii) which is a course of initial training for teachers, and
  - (b) 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 in respect of work done for his employer as part of that course.
- (9) For the purposes of paragraph (8) a “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>(1)</sup>;
  - (b) in Scotland, a course of a description falling within section 38 of the Further and Higher Education (Scotland) Act 1992<sup>(2)</sup>;
  - (c) in Northern Ireland, a course of a description referred to in Schedule 1 to the Further Education (Northern Ireland) Order 1997<sup>(3)</sup>.
- (10) A worker who satisfies the condition set out in paragraph (11) and is participating in a scheme which satisfies the conditions set out in paragraph (12), under which he is provided with shelter and other benefits (which may include money benefits) in return for performing work, does not qualify for the national minimum wage in respect of work performed for his employer under that scheme.
- (11) A worker satisfies the condition referred to in paragraph (10) if, immediately before his entry into the scheme—
- (a) he was either homeless or residing in a hostel for homeless persons; and
  - (b) he—
    - (i) was in receipt of, or entitled to, income support or income-based job seekers' allowance, or
    - (ii) was not entitled to receive either of those benefits only because he was not habitually resident in the United Kingdom.
- (12) A scheme satisfies this paragraph if—
- (a) the arrangements under which the scheme operates prevent the person operating the scheme or any other person from making a profit out of the provision of the scheme, other than one which may only be applied in running the scheme or other schemes satisfying the requirements of this paragraph or, where the person operating the scheme is a charity, for a purpose, being a purpose of the charity, relating to the alleviation of poverty;
  - (b) every person participating in the scheme satisfies the condition set out in paragraph (11), or would satisfy it if he were a worker;
  - (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.

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(1) 1988 c. 40.

(2) 1992 c. 37; section 38 was amended by the Education (Scotland) Act 1996 (c. 43), Schedule 5, paragraph 9.

(3) S.I.1997/1772 (N.I. 15).