



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Records*

#### **9 Duty of employers to keep records.**

For the purposes of this Act, the Secretary of State may by regulations make provision requiring employers—

- (a) to keep, in such form and manner as may be prescribed, such records as may be prescribed; and
- (b) to preserve those records for such period as may be prescribed.

#### **Modifications etc. (not altering text)**

- C1** S. 9 modified (*prosp.*) by 1948 c. 47, s. 3A(1)-(4) (as inserted by 1998 c. 39, ss. 47(1)(a), 56(2), Sch. 2 Pt. I, para. 3 (with s. 36))  
S. 9 modified (*prosp.*) by 1949 c. 30, s. 3A(1)-(3) (as inserted by 1998 c. 39, ss. 47(1)(b), 56(2), Sch. 2 Pt. II, para. 13 (with s. 36))
- C2** S. 9 extended (with modifications) (*prosp.*) by S.I. 1997/2151 (N.I. 22), art. 8A (as inserted by 1998 c. 39, ss. 47(1)(c), 56(2), Sch. 2 Pt. III, para. 26 (with s. 36))

#### **10 Worker's right of access to records.**

- (1) A worker may, in accordance with the following provisions of this section,—
  - (a) require his employer to produce any relevant records; and
  - (b) inspect and examine those records and copy any part of them.
- (2) The rights conferred by subsection (1) above are exercisable only if the worker believes on reasonable grounds that he is or may be being, or has or may have been, remunerated for any pay reference period by his employer at a rate which is less than the national minimum wage.
- (3) The rights conferred by subsection (1) above are exercisable only for the purpose of establishing whether or not the worker is being, or has been, remunerated for any pay

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reference period by his employer at a rate which is less than the national minimum wage.

- (4) The rights conferred by subsection (1) above are exercisable—
- (a) by the worker alone; or
  - (b) by the worker accompanied by such other person as the worker may think fit.
- (5) The rights conferred by subsection (1) above are exercisable only if the worker gives notice (a “production notice”) to his employer requesting the production of any relevant records relating to such period as may be described in the notice.
- (6) If the worker intends to exercise the right conferred by subsection (4)(b) above, the production notice must contain a statement of that intention.
- (7) Where a production notice is given, the employer shall give the worker reasonable notice of the place and time at which the relevant records will be produced.
- (8) The place at which the relevant records are produced must be—
- (a) the worker’s place of work; or
  - (b) any other place at which it is reasonable, in all the circumstances, for the worker to attend to inspect the relevant records; or
  - (c) such other place as may be agreed between the worker and the employer.
- (9) The relevant records must be produced—
- (a) before the end of the period of fourteen days following the date of receipt of the production notice; or
  - (b) at such later time as may be agreed during that period between the worker and the employer.
- (10) In this section—

“records” means records which the worker’s employer is required to keep and, at the time of receipt of the production notice, preserve in accordance with section 9 above;

“relevant records” means such parts of, or such extracts from, any records as are relevant to establishing whether or not the worker has, for any pay reference period to which the records relate, been remunerated by the employer at a rate which is at least equal to the national minimum wage.

**Modifications etc. (not altering text)**

- C3** S. 10 modified by 1948 c. 47, s. 3A(1)-(4) (as inserted (1.4.1999) by 1998 c. 39, ss. 47(1)(a), 56(2), Sch. 2 Pt. I, para. 3 (with s. 36); S.I. 1999/685, art. 2, Sch.)  
S. 10 modified by 1949 c. 30, s. 3A(1)-(3) (as inserted (1.4.1999) by 1998 c. 39, ss. 47(1)(b), 56(2), Sch. 2 Pt. II, para. 13 (with s. 36); S.I. 1999/685, art. 2, Sch. (with art. 3))
- C4** S. 10 extended (with modifications) by S.I. 1997/2151 (N.I. 22), art. 8A (as inserted (1.4.1999) by 1998 c. 39, ss. 47(1)(c), 56(2), Sch. 2 Pt. III, para. 26 (with s. 36); S.I. 1999/685, art. 2, Sch. (with art. 3))
- C5** S. 10 applied (with modifications) (E.W.) (30.7.2014) by Agricultural Sector (Wales) Act 2014 (anaw 6), ss. 5(1)(2)(a)(3)-(7), 19 (with s. 14(1))

**11 Failure of employer to allow access to records.**

- (1) A complaint may be presented to an employment tribunal by a worker on the ground that the employer—

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- (a) failed to produce some or all of the relevant records in accordance with subsections (8) and (9) of section 10 above; or
    - (b) failed to allow the worker to exercise some or all of the rights conferred by subsection (1)(b) or (4)(b) of that section.
  - (2) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall—
    - (a) make a declaration to that effect; and
    - (b) make an award that the employer pay to the worker a sum equal to 80 times the hourly amount of the national minimum wage (as in force when the award is made).
  - (3) An employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the expiry of the period of three months following—
    - (a) the end of the period of fourteen days mentioned in paragraph (a) of subsection (9) of section 10 above; or
    - (b) in a case where a later day was agreed under paragraph (b) of that subsection, that later day.
  - (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the expiry of the period of three months mentioned in subsection (3) above, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
- [<sup>F1</sup>(4A) Where the complaint is presented to an employment tribunal in England and Wales or Scotland, section 11A applies for the purposes of subsection (3).]
- (5) Expressions used in this section and in section 10 above have the same meaning in this section as they have in that section.

#### Textual Amendments

- F1** S. 11(4A) inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 2 para. 37](#); S.I. 2014/253, art. 3(g)

#### Modifications etc. (not altering text)

- C6** S. 11 modified by [1948 c. 47, s. 3A\(1\)-\(4\)](#) (as inserted (1.4.1999) by [1998 c. 39](#), ss. 47(1)(a), 56(2), [Sch. 2 Pt. I](#), para. 3 (with s. 36); S.I. 1999/685, art. 2, Sch.)  
S. 11 modified by [1949 c. 30, s. 3A\(1\)-\(3\)](#) (as inserted (1.4.1999) by [1998 c. 39](#), ss. 47(1)(b), 56(2), [Sch. 2 Pt. II](#), para. 13 (with s. 36); S.I. 1999/685, art. 2, Sch. (with art. 3))
- C7** S. 11 extended (with modifications) by [S.I. 1997/2151 \(N.I. 22\)](#), [art. 8A](#) (as inserted (1.4.1999) by [1998 c. 39](#), ss. 47(1)(c), 56(2), [Sch. 2 Pt. III](#), para. 26 (with s. 36); S.I. 1999/685, art. 2, Sch.)
- C8** S. 11 applied (with modifications) (E.W.) (30.7.2014) by [Agricultural Sector \(Wales\) Act 2014 \(anaw 6\)](#), ss. [5\(1\)\(2\)\(a\)\(3\)-\(7\)](#), [19](#) (with s. 14(1))

#### [<sup>F2</sup>11A Extension of time limit to facilitate conciliation before institution of proceedings

- (1) In this section—
  - (a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

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- (b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
- (2) In working out when the time limit set by section 11(3) expires the period beginning with the day after Day A and ending with Day B is not to be counted.
- (3) If the time limit set by section 11(3) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
- (4) The power conferred on the employment tribunal by subsection (4) of section 11 to extend the time limit set by subsection (3) of that section is exercisable in relation to that time limit as extended by this section.]

#### Textual Amendments

**F2** S. 11A inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 2 para. 38](#); S.I. 2014/253, art. 3(g)

## 12 Employer to provide worker with national minimum wage statement.

- (1) Regulations may make provision for the purpose of conferring on a worker the right to be given by his employer, at or before the time at which any payment of remuneration is made to the worker, a written statement.
- (2) The regulations may make provision with respect to the contents of any such statement and may, in particular, require it to contain—
  - (a) prescribed information relating to this Act or any regulations under it; or
  - (b) prescribed information for the purpose of assisting the worker to determine whether he has been remunerated at a rate at least equal to the national minimum wage during the period to which the payment of remuneration relates.
- (3) Any statement required to be given under this section to a worker by his employer may, if the worker is an employee, be included in the written itemised pay statement required to be given to him by his employer under section 8 of the <sup>M1</sup>Employment Rights Act 1996 or Article 40 of the <sup>M2</sup>Employment Rights (Northern Ireland) Order 1996, as the case may be.
- (4) The regulations may make provision for the purpose of applying—
  - (a) sections 11 and 12 of the <sup>M3</sup>Employment Rights Act 1996 (references to employment tribunals and determination of references), or
  - (b) in relation to Northern Ireland, Articles 43 and 44 of the <sup>M4</sup>Employment Rights (Northern Ireland) Order 1996 (references to industrial tribunals and determination of references),

in relation to a worker and any such statement as is mentioned in subsection (1) above as they apply in relation to an employee and a statement required to be given to him by his employer under section 8 of that Act or Article 40 of that Order, as the case may be.

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**Commencement Information**

- II** S. 12 wholly in force at 1.4.1999; s. 12(1)(2) in force fro certain purposes at Royal Assent see s. 56(2); s. 12 in force at 1.4.1999 insofar as not already in force by [S.I. 1998/2574](#), art. 2(2), [Sch. 2](#)
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**Marginal Citations**

- M1** 1996 c. 18.  
**M2** [S.I. 1996/1919 \(N.I.16\)](#).  
**M3** 1996 c. 18.  
**M4** [S.I. 1996/1919 \(N.I.16\)](#).

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