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STATUTORY INSTRUMENTS

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**2009 No. 1902**

**TERMS AND CONDITIONS OF EMPLOYMENT**

The National Minimum Wage Regulations  
1999 (Amendment) Regulations 2009

*Made* - - - - - *15th July 2009*  
*Coming into force* - - - - - *1st October 2009*

A draft of these Regulations was laid before Parliament in accordance with section 51(5) of the National Minimum Wage Act 1998(1) and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 1(3), 2, 3 and 51 of the National Minimum Wage Act 1998, makes the following Regulations.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Minimum Wage Regulations 1999 (Amendment) Regulations 2009 and shall come into force on 1st October 2009.

(2) In these Regulations “the Principal Regulations” means the National Minimum Wage Regulations 1999(2).

**Amendments to the Principal Regulations**

2. In regulation 11(3) of the Principal Regulations (the rate of the national minimum wage), for “£5.73” substitute “£5.80”.

3. In regulation 12(4) of the Principal Regulations (workers who do not qualify for the national minimum wage) after paragraph (15), insert—

“(16) A worker who is participating in 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(5)), does not qualify for the national minimum wage in respect of work done for his employer as part of that scheme.”.

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(1) 1998 c.39; section 3(1A) was inserted by S.I. 1999/583 and amended by S.I. 2007/2042.

(2) S.I. 1999/584.

(3) Regulation 11 was amended, and the amount increased, by S.I. 2000/1989, S.I. 2001/2673, S.I. 2002/1999, S.I. 2003/1923, S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/2001, S.I. 2007/2318, and S.I. 2008/1894.

(4) Regulation 12 was amended by S.I. 2000/1989, S.I. 2001/1108, S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/1031, S.I. 2007/2318, S.I. 2008/1879, S.I. 2008/1894 and S.R. (NI) 2008 No. 412.

(5) OJ No. L327, 24.11.2006, p.45.

4. In regulation 13 of the Principal Regulations (workers who qualify for the national minimum wage at a different rate)—

- (a) in paragraph (1)(6), for “£4.77” substitute “£4.83”; and
- (b) in paragraph (1A)(7), for “£3.53” substitute “£3.57”.

5. In regulation 31(1)(e) of the Principal Regulations (reductions from payments to be taken into account) omit “that is not paid through the payroll”.

6. In regulation 36(1)(8) of the Principal Regulations (amount permitted to be taken into account where living accommodation is provided), for “£4.46” substitute “£4.51”.

#### **Transitional Provision**

7. The amendments to the Principal Regulations made by regulations 3 and 5 do not apply in relation to any pay reference period beginning before 1st October 2009.

#### **Revocation Provision**

8. Regulations 3, 5 and 6 of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2008(9) are revoked.

15th July 2009

*Pat McFadden*  
Minister for Business, Innovation and Skills  
Department for Business, Innovation and Skills

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(6) Regulation 13(1) was amended and the amount increased by [S.I. 2000/1411](#), [S.I. 2001/2673](#), [S.I. 2002/1999](#), [S.I. 2003/1923](#), [S.I. 2004/1930](#), [S.I. 2005/2019](#), [S.I. 2006/2001](#), [S.I. 2007/2318](#) and [S.I. 2008/1894](#).

(7) Regulation 13(1A) was inserted by [S.I. 2004/1930](#) and amended and the amount increased by [S.I. 2005/2019](#), [S.I. 2006/2001](#), [S.I. 2007/2318](#) and [S.I. 2008/1894](#).

(8) Regulation 36(1) was amended and the amount increased by [S.I. 2003/1923](#), [S.I. 2004/1930](#), [S.I. 2005/2019](#), [S.I. 2006/2001](#), [S.I. 2007/2318](#) and [S.I. 2008/1894](#).

(9) [S.I. 2008/1894](#).

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## EXPLANATORY NOTE

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

These Regulations amend the National Minimum Wage Regulations 1999 (the “Principal Regulations”) and come into force on 1st October 2009.

Regulation 2 increases the principal rate of the national minimum wage from £5.73 to £5.80 per hour (regulation 11 of the Principal Regulations). The Regulations also increase the rate paid to workers aged between 18 and 21 from £4.77 to £4.83 per hour (regulation 4(a)) and the rate to be paid to workers aged below 18 who have ceased to be of compulsory school age from £3.53 to £3.57 per hour (regulation 4(b)).

Regulation 3 inserts two new classes of persons who do not qualify for the national minimum wage. These are workers participating in the European Community Erasmus and Comenius Programmes, part of the European Union action programme in the field of lifelong learning.

Regulation 5 amends regulation 31(e) of the Principal Regulations so that service charges, tips, gratuities and cover charges paid to a worker through the employer’s payroll do not count towards national minimum wage.

Regulation 6 amends the per day value of the accommodation amount which is applicable where an employer provides a worker with living accommodation. The amendment increases the amount from £4.46 to £4.51 for each day that accommodation is provided (regulation 36(1) of the Principal Regulations).

The Regulations contain a transitional provision. This provides that regulations 3 and 5 do not apply in relation to any pay reference period beginning before 1st October 2009.

The Regulations contain a revocation provision. This revokes previous provisions which increased the principal hourly rate of the national minimum wage, the rate to be paid to those who qualified for the national minimum wage at a different rate and the daily value of the accommodation amount.

A Regulatory Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.