

---

DRAFT STATUTORY INSTRUMENTS

---

**2015 No.**

**The National Minimum Wage Regulations 2015**

**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);
- (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(1).

## 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>(2)</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>(3)</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>(4)</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>(5)</sup>;
  - (c) in Northern Ireland, the Northern Ireland Housing Executive;
- “registered social landlord” means—
- (d) in England and Wales—
    - (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<sup>(6)</sup>, or
    - (ii) a social landlord registered under Part 1 of the Housing Act 1996<sup>(7)</sup> or a subsidiary or associate of such a person as defined in that Act<sup>(8)</sup>;
  - (e) in Scotland, a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010<sup>(9)</sup>;

---

(2) 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).

(3) 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.

(4) 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.

(5) 2001 asp 10.

(6) 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.

(7) 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.

(8) “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).

(9) 2010 asp 17.

- (f) in Northern Ireland, a housing association registered under Chapter II of Part II of the Housing (Northern Ireland) Order 1992(10).

### **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.

## 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.

---

(10) [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](#).