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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The National Minimum Wage Regulations 2015**

**PART 6**

**Exclusions**

**Schemes for training, work experience, temporary work or for seeking or obtaining work**

**51.**—(1) A person who is participating in a scheme which meets the requirements in paragraph (2) does not qualify for the national minimum wage for work done as part of that scheme.

(2) The requirements are that the scheme—

- (a) is designed to provide training, work experience or temporary work, or to assist in the seeking or obtaining of work, and
- (b) is, in whole or in part, made or funded by—
  - (i) the Secretary of State under section 2 of the Employment and Training Act 1973(1) or section 17B of the Jobseekers Act 1995(2);
  - (ii) the Scottish Ministers or the Welsh Ministers under section 2 of the Employment and Training Act 1973;
  - (iii) the Chief Executive of Skills Funding;
  - (iv) Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990(3);
  - (v) the Department for Employment and Learning under section 1 of the Employment and Training Act (Northern Ireland) 1950(4); or
  - (vi) the European Social Fund established under Article 162 of the Treaty on the Functioning of the European Union(5) .

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- (1) 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25; subsection (3A) and (3B) were inserted by the Trade Union Reform and Employment Rights Act 1993 (c.19), section 47; subsections (2) and (6) were repealed by the Employment Act 1989 (c.38), Schedule 7, paragraph 1. The powers under section 2 are exercisable by the Scottish Ministers concurrently with the Secretary of State by virtue of section 56(1)(g) of the Scotland Act 1998 (c.46). The powers under section 2 are exercisable by the Welsh Ministers concurrently with the Secretary of State by virtue of S.I. 1999/672 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).
  - (2) 1995 c.18. Section 17B was inserted by the Welfare Reform Act 2009 (c.24), section 1.
  - (3) 1990 c.35 (S.); subsection (3)(b) and (c) and (4) of section 2 were amended, and subsection (3)(d) was inserted, by the Trade Union Reform and Employment Rights Act 1993 (c.19), section 47 and Schedule 10, paragraph 1; subsection (4)(a) was amended by the Equality Act 2010 (c.15), Schedule 26(1), paragraph 20; subsection (6) was amended by S.I. 1999/1820.
  - (4) 1950 c.29 (N.I.); the powers of the Department under section 1 were extended by S.I. 1974/2144 (N.I.7), article 7; subsection (1) to (1C) were substituted for subsections (1) and (1A) by S.I. 1988/1087 (N.I. 10); subsections (2) and (3) were amended by S.I. 1990/1200 (N.I. 8); section 1(1A)(d) was amended by the Employment Act (Northern Ireland) 2010 c.12 (N.I.), Schedule 1, paragraph 1.
  - (5) OJ No C83, 30.3.2010, p.47.

### **Schemes for trial periods of work**

**52.**—(1) A person who is participating in a trial period of work with an employer for a period of six weeks or less, as part of a scheme which meets the requirements in paragraph (2), does not qualify for the national minimum wage for the work done for that employer in that period.

(2) The requirements are that the scheme—

- (a) is designed to provide training, work experience or temporary work, or to assist in the seeking or obtaining of work, and
- (b) is, in whole or in part, made or funded by—
  - (i) the Secretary of State under section 2 of the Employment and Training Act 1973 or section 17B of the Jobseekers Act 1995;
  - (ii) the Scottish Ministers or the Welsh Ministers under section 2 of the Employment and Training Act 1973;
  - (iii) the Chief Executive of Skills Funding;
  - (iv) Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990;
  - (v) the Department for Employment and Learning under section 1 of the Employment and Training Act (Northern Ireland) 1950; or
  - (vi) the European Social Fund established under Article 162 of the Treaty on the Functioning of the European Union.

### **Work experience as part of a higher or further education course**

**53.** A person who undertakes a higher education course or further education course, and 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 as respects work done for the employer as part of that course.

### **Traineeships in England**

**54.**—(1) A worker does not qualify for the national minimum wage for work done as part of that worker's participation in a traineeship in England to which paragraph (2) applies.

(2) This paragraph applies to a traineeship consisting of a skills programme which meets the following conditions—

- (a) the programme includes a work experience placement and work preparation training;
- (b) the programme lasts no more than six months;
- (c) the programme is government funded; and
- (d) the programme is open to persons who on the first day of the traineeship have attained the age of 16 but not 25 years old.

### **Work schemes for provision of accommodation to the homeless**

**55.**—(1) A worker, who meets the requirements in paragraph (2), does not qualify for the national minimum wage for work done for an employer, under a scheme which meets the requirements in paragraph (3), if the worker is provided with accommodation and other benefits (which may include money) under that scheme.

(2) The requirements are that immediately before entry into the scheme the worker was homeless or residing in a hostel for homeless persons and—

- (a) was in receipt of, or entitled to any of the following benefits—
  - (i) universal credit (payable under Part 1 of the Welfare Reform Act 2012**(6)**),
  - (ii) income support (payable under Part VII of the Social Security Contributions and Benefits Act 1992**(7)**),
  - (iii) income-based jobseeker's allowance (payable under Part I of the Jobseekers Act 1995**(8)**),
  - (iv) income-related employment and support allowance (payable under Part 1 of the Welfare Reform Act 2007**(9)** or Part 1 of the Welfare Reform Act (Northern Ireland) 2007**(10)**); or
- (b) was not entitled to receive any of those benefits only because the worker was not habitually resident in the United Kingdom.
- (3) The requirements for the scheme are as follows—
  - (a) no one makes a profit out of the scheme other than—
    - (i) a profit only applied to running the scheme or other qualifying schemes, or
    - (ii) where the person operating the scheme is a charity, for a purpose of the charity relating to the alleviation of poverty;
  - (b) every person participating in the scheme satisfies the same requirements as for workers in paragraph (2) (although they need not all be workers);
  - (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.

## European Union programmes

**56.** A worker does not qualify for the national minimum wage for work that is done as a participant in any of the following programmes—

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- (6) 2012 c.5.
  - (7) 1992 c.4; Part VII was amended by the Housing Act 1991 (c.52), Schedule 19; the Local Government Finance Act 1992 (c.14), Schedule 9 and Schedule 14; the Social Security (Incapacity for Work) Act 1994 (c.18), Schedules 1 and Schedule 2; the Local Government etc (Scotland) Act 1994 (c.39), Schedules 13 and 14; the Jobseekers Act 1995 (c.18), Schedule 2 and 3; the Housing Act 1996 (c.52), Schedule 19(6); the Welfare Reform and Pensions Act 1999 (c.30), Schedule 8(IV); the Health and Social Care Act 2001 (c.15), Schedule 6(3); the State Pension Credit Act 2002 (c.16), Schedule 2 and 3; the Tax Credits Act 2002 (c.21), Schedule 6; the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6; the Civil Partnership Act 2004 (c.33), Schedule 24(3) and Schedule 30; the Welfare Reform Act 2007 (c.5), Sections 30(2) and 31(1), Schedule 3, 5 and 8; the Welfare Reform Act 2009 (c.24), section 3; the Welfare Reform Act 2012 (c.5), section 69 and Schedule 14(1); S.I. 2002/1397; S.I. 2008/632; S.I.2009/497 and S.I. 2012/780; Part VII was repealed for certain purposes by the Welfare Reform Act 2012, schedule 14 and S.I.2013/358.
  - (8) 1995 c.18; Part I was amended by the Employment Rights Act 1996 (c.18), Schedule 1; the Social Security Act 1998 (c.14), Schedules 7 and 8; the Welfare Reform and Pensions Act 1999 (c.30), Schedules 1, 7, 8 and 13; the State Pension Credit Act 2002 (c.16), Schedule 2(3); the National Insurance Contributions Act 2002 (c.19), Schedule 1; the Income Tax (Earnings and Pensions) Act 2003 (c.18), Schedule 6; the Civil Partnership Act 2004 (c.33), Schedule 24(7) and S.I. 2006/343; the Welfare Reform Act 2007 (c.5), Schedule 3; the Welfare Reform Act 2009 (c.24), sections 1, 4, 12, 32 to 33, Schedule 2, Schedule 7(1), Schedule 7(3) and S.I. 2010/293; Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10), Schedule 24; Welfare Reform Act 2012 (c.5), sections 44, 46, 49, 61, Schedule 2, Schedule 5, Schedule 7, and Schedule 14(1) to (3); S.I. 2011/1498; Part I was modified by S.I. 2003/2438, S.I. 2006/962, S.I. 1998/2825, S.I. 2000/3134, S.I. 1995/3276, S.I. 1996/2567, S.I. 1996/3182, S.I. 2006/343, S.I. 1996/207 and S.I. 2013/378.
  - (9) 2007 c.5; Part I was amended by the Welfare Reform Act 2009 (c.24), sections 3, 10 and 28, and Schedule 3(2), and the Welfare Reform Act 2012 (c.5), sections 50 to 57 and 60, Schedules 3 and 14; Part I was modified by S.I. 2008/794, S.I. 2010/875, S.I. 2010/1907 and S.I. 2013/379.
  - (10) 2007 c.2 (N.I.); Part I was modified by S.I. 2010/312; Part I was amended by the Welfare Reform Act (Northern Ireland) 2010 (c.13)(N.I.), sections 3, 10, and 22.

- (a) the second phase of the European Community Leonardo da Vinci programme (established pursuant to Council [Decision 99/382/EC\(11\)](#));
- (b) the European Community Leonardo da Vinci programme (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([12](#)));
- (c) the European Community Youth in Action Programme (established pursuant to Decision No [1719/2006/EC](#) of the European Parliament and the Council of the European Union([13](#)));
- (d) 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);
- (e) Erasmus+ established pursuant to Regulation (EU) No.1288/2013 of the European Parliament and of the Council of 11th December 2013 establishing ‘Erasmus+’: the Union programme for education, training, youth and sport([14](#)).

#### **Work does not include work relating to family household**

**57.**—(1) In these Regulations, “work” does not include any work done by a worker in relation to an employer’s family household if the requirements in paragraphs (2) or (3) are met.

(2) The requirements are all of the following—

- (a) the worker is a member of the employer’s family;
- (b) the worker resides in the family home of the employer;
- (c) the worker shares in the tasks and activities of the family.

(3) The requirements are all of the following—

- (a) the worker resides in the family home of the worker’s employer;
- (b) the worker is not a member of that family, but is treated as such, in particular as regards to the provision of living accommodation and meals and the sharing of tasks and leisure activities;
- (c) the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, as respects the provision of the living accommodation or meals;
- (d) if the work had been done by a member of the employer’s family, it would not be treated as work or as performed under a worker’s contract because the requirements in paragraph (2) would be met.

#### **Work does not include work relating to family business**

**58.** “Work” does not include any work done by a worker in relation to an employer’s family business if the worker—

- (a) is a member of the employer’s family,
- (b) resides in the family home of the employer, and
- (c) participates in the running of the family business.

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(11) OJ L 146, 11/6/1999, p. 33, as amended by Council Regulation (EC) No 885/2004 (OJ L 168, 01/05/2004, p.1) and European Parliament and Council Regulation No 1882/2003 (OJ L 284, 31/10/2003, p.1 ).

(12) OJ L 327, 24/11/2006, p. 45, as amended by European Parliament and Council Decision No.[1357/2008/EC](#) (OJ L 350, 30/12/2008, p.56).

(13) OJ L 327, 24/11/2006, p. 30, as amended by the Corrigendum (OJ L 337, 05/12/2006, p.68) and European Parliament and Council Decision No. [1349/2008/EC](#) (OJ L 348, 24/12/2008, p.113).

(14) OJ L 347, 20.12.2013, p.50.

