



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Offences*

VALID FROM 01/04/1999

#### **31 Offences.**

- (1) If the employer of a worker who qualifies for the national minimum wage refuses or wilfully neglects to remunerate the worker for any pay reference period at a rate which is at least equal to the national minimum wage, that employer is guilty of an offence.
- (2) If a person who is required to keep or preserve any record in accordance with regulations under section 9 above fails to do so, that person is guilty of an offence.
- (3) If a person makes, or knowingly causes or allows to be made, in a record required to be kept in accordance with regulations under section 9 above any entry which he knows to be false in a material particular, that person is guilty of an offence.
- (4) If a person, for purposes connected with the provisions of this Act, produces or furnishes, or knowingly causes or allows to be produced or furnished, any record or information which he knows to be false in a material particular, that person is guilty of an offence.
- (5) If a person—
  - (a) intentionally delays or obstructs an officer acting for the purposes of this Act in the exercise of any power conferred by this Act, or
  - (b) refuses or neglects to answer any question, furnish any information or produce any document when required to do so under section 14(1) above,that person is guilty of an offence.
- (6) Where the commission by any person of an offence under subsection (1) or (2) above is due to the act or default of some other person, that other person is also guilty of the offence.

*Status: Point in time view as at 01/11/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

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- (7) A person may be charged with and convicted of an offence by virtue of subsection (6) above whether or not proceedings are taken against any other person.
- (8) In any proceedings for an offence under subsection (1) or (2) above it shall be a defence for the person charged to prove that he exercised all due diligence and took all reasonable precautions to secure that the provisions of this Act, and of any relevant regulations made under it, were complied with by himself and by any person under his control.
- (9) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

- C1** S. 31 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. 31 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.)
- C2** S. 31 extended (with modifications) by S.I. 1977/2151 (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); S.I. 1999/685, art. 2, Sch.)

VALID FROM 01/04/1999

### **32 Offences by bodies corporate etc.**

- (1) This section applies to any offence under this Act.
- (2) If an offence committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of an officer of the body, or
  - (b) to be attributable to any neglect on the part of such an officer,
 the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In subsection (2) above “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (4) If the affairs of a body corporate are managed by its members, subsection (2) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (5) If an offence committed by a partnership in Scotland is proved—
  - (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on the part of a partner,
 the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsection (5) above, “partner” includes a person purporting to act as a partner.

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

- C3** S. 32 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. 32 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))
- C4** S. 32 extended (with modifications) (*prosp.*) by S.I. 1977/2151 (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))

VALID FROM 01/04/1999

**33 Proceedings for offences.**

- (1) The persons who may conduct proceedings for an offence under this Act—
- (a) in England and Wales, before a magistrates' court, or
  - (b) in Northern Ireland, before a court of summary jurisdiction,
- shall include any person authorised for the purpose by the Secretary of State even if that person is not a barrister or solicitor.
- (2) In England and Wales or Northern Ireland, proceedings for an offence under this Act may be begun at any time within whichever of the following periods expires the later, that is to say—
- (a) the period of 6 months from the date on which evidence, sufficient in the opinion of the Secretary of State to justify a prosecution for the offence, comes to the knowledge of the Secretary of State, or
  - (b) the period of 12 months from the commission of the offence,
- notwithstanding anything in any other enactment (including an enactment comprised in Northern Ireland legislation) or in any instrument made under an enactment.
- (3) For the purposes of subsection (2) above, a certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to the knowledge of the Secretary of State shall be conclusive evidence of that date.
- (4) In Scotland, proceedings for an offence under this Act may, notwithstanding anything in section 136 of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995, be commenced at any time within—
- (a) the period of 6 months from the date on which evidence, sufficient in the opinion of the procurator fiscal to justify proceedings, comes to the knowledge of the procurator fiscal, or
  - (b) the period of 12 months from the commission of the offence,
- whichever period expires the later.
- (5) For the purposes of subsection (4) above—
- (a) a certificate purporting to be signed by or on behalf of the procurator fiscal as to the date on which such evidence as is mentioned above came to the knowledge of the procurator fiscal shall be conclusive evidence of that date; and

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- (b) subsection (3) of section 136 of the said Act of 1995 (date of commencement of proceedings) shall have effect as it has effect for the purposes of that section.

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

- C5** S. 33 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.)
- C6** S. 33 extended (with modifications) by S.I. 1977/2151 (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.)
- C7** S. 33(4)(5) 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.)

**Marginal Citations**

- M1** 1995 c. 46.

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