



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Offences*

#### **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.
- (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.

*Status: Point in time view as at 30/07/2014.*

*Changes to legislation: There are currently no known outstanding effects for the National Minimum Wage Act 1998, Cross Heading: Offences. (See end of Document for details)*

- (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
- [<sup>F1</sup>(a) on conviction on indictment, to a fine, or
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.]

#### Textual Amendments

- F1** Words in s. 31(9) substituted (6.4.2009) by [Employment Act 2008 \(c. 24\)](#), **ss. 11(1)**, 22(1)(c) (with s. 11(3)); S.I. 2009/603, art. 2 (with art. 3, Sch.)

#### 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.)
- C3** S. 31 applied (with modifications) (E.W.) (30.7.2014) by [Agricultural Sector \(Wales\) Act 2014 \(anaw 6\)](#), **ss. 5(1)(2)(1)(3)-(7), 19** (with s. 14(1))

## 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)**

- C4** 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))
- C5** 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))

**33 Proceedings for offences.**

- (1) The persons who may conduct proceedings for an offence under this Act—
  - <sup>F2</sup>(a) .....
  - (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.

[<sup>F3</sup>(1A) The persons who may conduct proceedings for an offence under this Act in England and Wales, before a magistrates' court, shall include any person authorised for the purpose by the Secretary of State.]

- <sup>F4</sup>(2) .....
- <sup>F4</sup>(3) .....
- <sup>F4</sup>(4) .....
- <sup>F4</sup>(5) .....

**Textual Amendments**

- F2** S. 33(1)(a) repealed (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), Sch. 21 para. 125(a), **Sch. 23** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)(i)(ix)
- F3** S. 33(1A) inserted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 125(b)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F4** S. 33(2)-(5) repealed (6.4.2009) by Employment Act 2008 (c. 24), ss. 11(2), 22(1)(c), **Sch. Pt. 4** (with s. 11(3)); S.I. 2009/603, art. 2 (with art. 3, Sch.)

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

- C6** 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.)
- C7** 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.)
- C8** S. 33 applied (with modifications) (30.7.2014) by Agricultural Sector (Wales) Act 2014 (anaw 6), **ss. 5(1)(2)(1)(3)-(7)**, 19 (with s. 14(1))

**Status:**

Point in time view as at 30/07/2014.

**Changes to legislation:**

There are currently no known outstanding effects for the National Minimum Wage Act 1998,  
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