



National Minimum Wage Act 1998

1998 CHAPTER 39

Special classes of person

34 Agency workers who are not otherwise “workers”.

- (1) This section applies in any case where an individual (“the agency worker”)—
- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangements made between the agent and the principal; but
 - (b) is not, as respects that work, a worker, because of the absence of a worker’s contract between the individual and the agent or the principal; and
 - (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.
- (2) In a case where this section applies, the other provisions of this Act shall have effect as if there were a worker’s contract for the doing of the work by the agency worker made between the agency worker and—
- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or
 - (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.

Modifications etc. (not altering text)

C1 S. 34(1) applied (E.W.N.I.) (11.11.1999) by 1999 c. 31, s. 6(4)(c) (with s. 10(2)(3))

35 Home workers who are not otherwise “workers”.

- (1) In determining for the purposes of this Act whether a home worker is or is not a worker, section 54(3)(b) below shall have effect as if for the word “personally” there were substituted “ (whether personally or otherwise) ”.

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- (2) In this section “home worker” means an individual who contracts with a person, for the purposes of that person’s business, for the execution of work to be done in a place not under the control or management of that person.

Modifications etc. (not altering text)

C2 S. 35(2) applied (E.W.N.I.) (11.11.1999) by 1999 c. 31, s. 6(4)(b) (with s. 10(2)(3))

36 Crown employment.

- (1) Subject to section 37 below, the provisions of this Act have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other workers.
- (2) In this Act, subject to section 37 below, “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by statutory provision.
- (3) For the purposes of the application of the other provisions of this Act in relation to Crown employment in accordance with subsection (1) above—
- (a) references to an employee or a worker shall be construed as references to a person in Crown employment;
 - (b) references to a contract of employment or a worker’s contract shall be construed as references to the terms of employment of a person in Crown employment; and
 - (c) references to dismissal, or to the termination of a worker’s contract, shall be construed as references to the termination of Crown employment.

37 Armed forces.

- (1) A person serving as a member of the naval, military or air forces of the Crown does not qualify for the national minimum wage in respect of that service.
- (2) Section 36 above applies to employment by an association established for the purposes of Part XI of the ^{M1}Reserve Forces Act 1996, notwithstanding anything in subsection (1) above.

Modifications etc. (not altering text)

C3 S. 37: transfer of certain functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

Marginal Citations

M1 1996 c. 14.

[^{F1}37A Cadet Force Adult Volunteers

- (1) A person (not being a person to whom section 37(1) above applies) who—
- (a) is a member of any of the forces specified in subsection (2) below, and
 - (b) assists the activities of those forces otherwise than in the course of Crown employment,

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does not qualify for the national minimum wage in respect of anything done by him in so assisting those activities.

- (2) The forces referred to in subsection (1) above are—
- (a) the Combined Cadet Force;
 - (b) the Sea Cadet Corps;
 - (c) the Army Cadet Force;
 - (d) the Air Training Corps.]

Textual Amendments

F1 S. 37A inserted (13.1.2009) by [Employment Act 2008 \(c. 24\)](#), **ss. 13, 22(1)(d)**

38 House of Lords staff.

- (1) Apart from section 21 above, the provisions of this Act have effect in relation to employment as a relevant member of the House of Lords staff as they have effect in relation to other employment.
- (2) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Lords staff from bringing before the High Court or [^{F2}the county court] any claim under this Act.
- (3) In this section “relevant member of the House of Lords staff” means any person who is employed under a worker’s contract with the Corporate Officer of the House of Lords.

Textual Amendments

F2 Words in s. 38(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

39 House of Commons staff.

- (1) Apart from section 21 above, the provisions of this Act have effect in relation to employment as a relevant member of the House of Commons staff as they have effect in relation to other employment.
- (2) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from bringing before the High Court or [^{F3}the county court] any claim under this Act.
- (3) In this section “relevant member of the House of Commons staff” means any person—
- (a) who was appointed by the House of Commons Commission; or
 - (b) who is a member of the Speaker’s personal staff.

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Textual Amendments

- F3** Words in s. 39(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

40 **Mariners.**

For the purposes of this Act, an individual employed to work on board a ship registered in the United Kingdom under Part II of the ^{M2}Merchant Shipping Act 1995 shall be treated as an individual who under his contract ordinarily works in the United Kingdom unless—

- (a) the employment is wholly outside the United Kingdom; or
 - (b) the person is not ordinarily resident in the United Kingdom;
- and related expressions shall be construed accordingly.

Marginal Citations

- M2** [1995 c. 21](#).

Status:

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