
STATUTORY INSTRUMENTS

1999 No. 584

The National Minimum Wage Regulations 1999

PART II

THE RATE OF THE NATIONAL MINIMUM WAGE

The rate and exclusions

The rate of the national minimum wage

11. The single hourly rate of the national minimum wage is £3.60.

Workers who do not qualify for the national minimum wage

12.—(1) Workers who have not attained the age of 18 do not qualify for the national minimum wage.

(2) A worker who—

- (a) has not attained the age of 26,
- (b) is employed under a contract of apprenticeship or, in accordance with paragraph (3), is to be treated as employed under a contract of apprenticeship, and
- (c) is within the first 12 months after the commencement of that employment or has not attained the age of 19,

does not qualify for the national minimum wage in respect of work done for his employer under that contract.

(3) A worker is to be treated as employed under a contract of apprenticeship for the purposes of paragraph (2)(b) if, and only if, he is engaged under the arrangements made by the Government known as Modern Apprenticeships.

(4) For the purposes of paragraph (2)(c) a worker does not commence employment with an employer where he has previously been employed by another employer and continuity of employment is preserved between the two employments by or under any enactment.

(5) A worker who is participating in a scheme, designed to provide him with training, work experience or temporary work, or to assist him in seeking or obtaining work, which is either—

- (a) a scheme, not being one falling within sub-paragraph (b), provided to him under arrangements made by the Government (other than arrangements falling within paragraph (3)), or
- (b) funded in whole or part under the European Social Fund,

does not qualify for the national minimum wage in respect of work done for his employer as part of that scheme except to the extent that paragraph (6) or (7) otherwise provides.

(6) Paragraph (5) does not apply to a worker who is participating in a scheme falling within sub-paragraph (a) of paragraph (5) if he is employed by the employer for whom he works under the

scheme, unless the worker is engaged, for a period not exceeding three weeks, in a trial period of work with a prospective employer under arrangements made by the Government.

(7) Paragraph (5) does not apply to an employee who is participating in a scheme falling within sub-paragraph (b) of paragraph (5) if he is employed by the employer for whom he works under the scheme, unless the employee is engaged, for a period not exceeding three weeks, in a trial period of work with a prospective employer under arrangements made by the Government.

(8) A worker who—

(a) is attending a higher education course—

- (i) the standard of which is not higher than that of a first degree course, or
- (ii) which is a course of initial training for teachers, and

(b) 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 in respect of work done for his employer as part of that course.

(9) For the purposes of paragraph (8) a “higher education course” means—

- (a) in England and Wales, a course of a description referred to in Schedule 6 to the Education Reform Act 1988⁽¹⁾;
- (b) in Scotland, a course of a description falling within section 38 of the Further and Higher Education (Scotland) Act 1992⁽²⁾;
- (c) in Northern Ireland, a course of a description referred to in Schedule 1 to the Further Education (Northern Ireland) Order 1997⁽³⁾.

(10) A worker who satisfies the condition set out in paragraph (11) and is participating in a scheme which satisfies the conditions set out in paragraph (12), under which he is provided with shelter and other benefits (which may include money benefits) in return for performing work, does not qualify for the national minimum wage in respect of work performed for his employer under that scheme.

(11) A worker satisfies the condition referred to in paragraph (10) if, immediately before his entry into the scheme—

- (a) he was either homeless or residing in a hostel for homeless persons; and
- (b) he—

- (i) was in receipt of, or entitled to, income support or income-based job seekers' allowance, or
- (ii) was not entitled to receive either of those benefits only because he was not habitually resident in the United Kingdom.

(12) A scheme satisfies this paragraph if—

- (a) the arrangements under which the scheme operates prevent the person operating the scheme or any other person from making a profit out of the provision of the scheme, other than one which may only be applied in running the scheme or other schemes satisfying the requirements of this paragraph or, where the person operating the scheme is a charity, for a purpose, being a purpose of the charity, relating to the alleviation of poverty;
- (b) every person participating in the scheme satisfies the condition set out in paragraph (11), or would satisfy it if he were a worker;
- (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

(1) 1988 c. 40.

(2) 1992 c. 37; section 38 was amended by the Education (Scotland) Act 1996 (c. 43), Schedule 5, paragraph 9.

(3) S.I.1997/1772 (N.I. 15).

- (d) the work done under the scheme is both provided by, and performed for, the person operating the scheme.

Workers who qualify for the national minimum wage at a different rate

13.—(1) The hourly rate of the national minimum wage is £3.00 for a worker who has attained the age of 18 but not the age of 22.

- (2) The hourly rate of the national minimum wage is £3.20 for a worker who—
 - (a) has attained the age of 22;
 - (b) is within the first six months after the commencement of his employment with an employer;
 - (c) has not previously been employed either by that employer or by an associated employer of that employer; and
 - (d) has entered into an agreement with the employer requiring the worker to take part in accredited training on at least 26 days between the commencement of his employment or, if later, the day upon which he entered into the agreement, and the end of the six month period referred to in sub-paragraph (b).
- (3) In this regulation “accredited training” means—
 - (a) training by means of a course of a description mentioned in paragraph (a) of Schedule 2 to the Further and Higher Education Act 1992⁽⁴⁾;
 - (b) training by means of a course leading to a qualification accredited or awarded by the Scottish Qualifications Authority, other than qualifications known as Standard Grade, Higher Grade and Certificate of Sixth Year Studies;
 - (c) a course which prepares students in Northern Ireland to obtain a vocational qualification which corresponds to, or falls within a class corresponding to, any qualification or class of qualification approved by the Secretary of State for the purposes of paragraph (a) of Schedule 2 to the Further and Higher Education Act 1992;
 - (d) training provided by the worker’s employer where—
 - (i) the training is recognised in England and Wales, both as being directed towards the achievement of a National Vocational Qualification at any level, and as including at least 50% of the requirements of the relevant level, by an awarding body accredited for this purpose by virtue of an accreditation agreement with the Qualifications and Curriculum Authority to which it is a party,
 - (ii) the training is recognised in Scotland, both as being directed towards the achievement of a Scottish Vocational Qualification at any level, and as including at least 50% of the requirements of the relevant level, by an awarding body accredited for this purpose by virtue of an accreditation agreement with the Scottish Qualifications Authority to which it is a party,
 - (iii) the training is recognised in Northern Ireland, both as being directed towards the achievement of a National Vocational Qualification at any level, and as included at least 50% of the requirements of the relevant level, by an awarding body accredited for this purpose by virtue of an accreditation agreement with the Qualifications and Curriculum Authority to which it is a party;
 - (e) where the worker is engaged as part of his work in a training scheme falling within the provision made for persons of 18 or over who (at the time of commencing their engagement in the scheme) have not attained the age of 25, under the arrangements made

(4) 1992 c. 13.

by the Government known as the “New Deal” (or under any other title by which those arrangements may subsequently become known)–

- (i) in England and Wales, training by means of a course of a description mentioned in Schedule 2 to the Further and Higher Education Act 1992,
- (ii) in Scotland, training by means of a course or programme of a description mentioned in section 6(1) of the Further and Higher Education (Scotland) Act 1992(5),
- (iii) in Northern Ireland, training by means of a relevant course.

(4) For the purposes of paragraph (2)(b) a worker does not commence employment with an employer where he has previously been employed by another employer and continuity of employment is preserved between the two employments by or under any enactment.

(5) For the purposes of paragraph (2)(c) two employers shall be treated as associated if–

- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control.

(6) For the purposes of paragraph (3)(e)(iii) “relevant course” means–

- (a) a course which prepares students in Northern Ireland to obtain a vocational qualification which corresponds to, or falls within a class corresponding to, any qualification or class of qualification approved by the Secretary of State for the purposes of paragraph (a) of Schedule 2 to the Further and Higher Education Act 1992;
- (b) a course which prepares students to qualify for–
 - (i) the General Certificate of Secondary Education, or
 - (ii) the General Certificate of Education at Advanced Level or Advanced Supplementary Level (including special papers);
- (c) a course which corresponds to any course for the time being approved by the Secretary of State under, and for the purposes of, paragraph (c) of Schedule 2 to the Further and Higher Education Act 1992, which prepares students for entry to a course of higher education;
- (d) a course which prepares students for entry to another course falling within paragraphs (a) to (c);
- (e) a course of basic literacy in English;
- (f) a course to improve the knowledge of English of those for whom English is not the language spoken at home;
- (g) a course to teach the basics of mathematics;
- (h) a course to teach independent living and communication skills to persons having learning difficulties which prepares them for entry to another course falling within paragraphs (d) to (g) above.

(7) Paragraphs (1) and (2) do not apply in relation to a worker who, by virtue of regulation 12, does not qualify for the national minimum wage.

Calculation of the hourly rate

Method of determining whether the national minimum wage has been paid

14.—(1) The hourly rate paid to a worker in a pay reference period shall be determined by dividing the total calculated in accordance with paragraph (2) by the number of hours specified in paragraph (3).

(5) 1992 c. 37; section 6(1)(b)(i) was amended by the Education (Scotland) Act 1996 (c. 43), Schedule 5, paragraph 8.

(2) the total referred to in paragraph (1) shall be calculated by subtracting from the total of remuneration in the pay reference period determined under regulation 30, the total of reductions determined under regulations 31 to 37.

(3) The hours referred to in paragraph (1) are the total number of hours of time work, salaried hours work, output work and unmeasured work worked by the worker in the pay reference period that have been ascertained in accordance with regulations 20 to 29.