

EXPLANATORY MEMORANDUM TO
THE NATIONAL MINIMUM WAGE REGULATIONS 2015

2015 No. 621

1. This explanatory memorandum has been prepared by the Department for Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument consolidates the National Minimum Wage Regulations 1999 (“the 1999 Regulations”) and subsequent amending regulations with the purpose of making the rules clearer and more workable for employers and employees. The instrument does not introduce substantive changes to the rules.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations do not include transitional provisions because they revoke and re-enact, with modification, the 1999 Regulations. Section 17(2) of the Interpretation Act 1978 (c.30) provides that in such circumstances: (a) any reference in any other enactment to the 1999 Regulations shall be construed as a reference to this instrument; and (b) anything done under the 1999 Regulations will have effect as if done under this instrument.

3.2 Our view is that under section 17(2) of the Interpretation Act 1978 the calculation of the minimum wage under regulation 14 of the 1999 Regulations is a thing which is done under those Regulations and will have effect as if it had been done under the 2015 Regulations. Similarly, our view is that a pay reference period under the 1999 Regulations which started before the coming into force of the 2015 Regulations will have effect as if it were determined under the 2015 Regulations.

4. Legislative Background

4.1 The 1999 Regulations set out detailed rules for determining whether a worker is paid the national minimum wage. Those regulations have been amended over 20 times since their introduction. These Regulations consolidate the 1999 Regulations and the subsequent amending regulations into a single instrument.

4.2 This instrument consolidates the 1999 Regulations and subsequent amending regulations with the aim of making the rules clearer and more workable for employers and employees. There are changes made to reflect current drafting practices, including making provisions gender-neutral, to ensure that the rules are set out as clearly as possible. There are also changes made to the structure of the rules, including the use of shorter and more focused provisions, to make it easier for the reader to navigate.

4.3 This instrument does not introduce substantive changes to the rules.

4.4 The 27 sets of regulations consolidated by this instrument are:

1. National Minimum Wage Act 1998 (Commencement No 1 and Transitional Provisions) Order 1998;
2. National Minimum Wage Act 1998 (Commencement No 2 and Transitional Provisions) Order 1999;
3. National Minimum Wage Act 1998 (Amendment) Regulations 1999;
4. National Minimum Wage Regulations 1999;
5. National Minimum Wage (Offshore Employment) Order 1999;
6. National Minimum Wage (Increase in Development Rate for Young Workers) Regulations 2000;
7. National Minimum Wage Regulations 1999 (Amendment) Regulations 2000;
8. National Minimum Wage Regulations 1999 (Amendment) (No 2) Regulations 2001;
9. National Minimum Wage Regulations 1999 (Amendment) Regulations 2001
10. National Minimum Wage Regulations 1999 (Amendment) Regulations 2002;
11. National Minimum Wage Regulations 1999 (Amendment) Regulations 2003;
12. National Minimum Wage Regulations 1999 (Amendment) (No 2) Regulations 2004;
13. National Minimum Wage Regulations 1999 (Amendment) Regulations 2004;
14. National Minimum Wage Regulations 1999 (Amendment) Regulations 2005;
15. National Minimum Wage Regulations 1999 (Amendment) Regulations 2006;
16. National Minimum Wage Regulations 1999 (Amendment) Regulations 2007;
17. National Minimum Wage Act 1998 (Amendment) Regulations 2007;
18. National Minimum Wage Regulations 1999 (Amendment) Regulations 2008;
19. National Minimum Wage Regulations 1999 (Amendment) Regulations 2009;
20. National Minimum Wage Regulations 1999 (Amendment) Regulations 2010;
21. National Minimum Wage (Amendment) (No 2) Regulations 2010;
22. National Minimum Wage (Amendment) (No 2) Regulations 2011;
23. National Minimum Wage (Amendment) Regulations 2011;
24. National Minimum Wage (Amendment) Regulations 2012;
25. National Minimum Wage (Amendment) Regulations 2013;
26. National Minimum Wage (Amendment) Regulations 2014; and
27. National Minimum Wage (Variation of Financial Penalty) Regulations 2014.

5. Territorial Extent and Application

5.1 This instrument extends and applies to the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs, Jo Swinson MP, has made the following statement regarding Human

Rights:

In my view the provisions of the National Minimum Wage Regulations 2015 are compatible with the Convention rights.

7. Policy Background

- What is being done and why

7.1 The 1999 Regulations set out detailed rules for determining whether a worker is paid the national minimum wage. They make provision for the national minimum wage rates, exemptions, what payments count towards minimum wage pay, how to determine what hours have been worked for minimum wage purposes, and what minimum wage records need to be kept. The 1999 Regulations have been amended over twenty times since they came into force including a number of substantial changes.

7.2 As part of the Red Tape Challenge, the Government decided in 2014 that the 1999 Regulations and subsequent amending regulations should be consolidated in order to make the detailed rules clearer and more workable for employers and employees. We have also taken the opportunity to update the drafting to reflect current drafting practices and to try and ensure that the rules are set out as clearly as possible. This has included changes to the drafting to reflect current drafting practice (such as making the provisions gender neutral) and to the structure so that the rules are clearer and more intuitive (such as the use of shorter and more focused provisions).

8. Consultation outcome

8.1 The Government consulted on a draft of this instrument between 22 July 2014 and 15th September 2014, which drew 22 responses. It was made clear that the consultation was not to intended re-open the policy decisions behind the detailed rules. The Government nonetheless invited respondents' views on policy changes ahead of a possible future review of National Minimum Wage policy.

8.2 The majority of respondents welcomed the consolidation of a complex set of detailed rules relating to the national minimum wage.

8.3 However most respondents expressed that even further clarity would be welcome, particularly in the guidance, including the provision of further practical examples. A copy of the consultation and the Government's response document are available on the gov.uk website.

9. Guidance

9.1 Guidance¹ on the national minimum wage is available on the gov.uk website. The Government is committed to a review of the guidance on the National Minimum Wage

¹ <https://www.gov.uk/national-minimum-wage>

Rules during 2015, reflecting where appropriate views expressed in the consultation responses, in order to improve the information available to individuals and employers on the detailed rules relating to the National Minimum Wage.

9.2 We intend to update guidance on gov.uk and circulate the link to the respondents to the consultation and other known interested parties.

10. Impact

10.1 An impact assessment has not been prepared for this instrument as no impact on business, charities, voluntary bodies or the public sector is foreseen.

11. Regulating small business

11.1 This instrument has no impact on small business.

12. Monitoring & review

12.1 We will continue to monitor any comments from users of the legislation and consider these in the event of future amendments to the National Minimum Wage regulations.

13. Contact

Marleen Jannink at the Department for Business Innovation and Skills can answer any queries regarding the instrument. Marleen can be contacted on 020 7215 3135 or marleen.jannink@bis.gsi.gov.uk