



Statutory Document No. 397/01

## THE MINIMUM WAGE ACT 2001

### THE MINIMUM WAGE REGULATIONS 2001

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## THE MINIMUM WAGE ACT 2001

### THE MINIMUM WAGE REGULATIONS 2001

Approved by Tynwald: 13<sup>th</sup> July 2001

Coming into operation: 1<sup>st</sup> January 2002

In exercise of the powers conferred on the Department of Trade and Industry by section 2 of the Minimum Wage Act 2001, and of all other enabling powers, the following Regulations are hereby made:-

#### PART I

#### GENERAL AND INTERPRETATION

##### Citation and commencement

1. These Regulations may be cited as the Minimum Wage Regulations 2001 and shall come into operation on the 1<sup>st</sup> January 2002.

##### Interpretation

2. - (1) In these Regulations-

"the Act" means the Minimum Wage Act 2001;

"allowance", other than in regulation 8(b), means any payment paid by the employer to a worker attributable to a particular aspect of his working arrangements or to his working or personal circumstances that is not consolidated into his standard pay, but does not include an allowance designed to refund a worker in respect of expenses incurred by him in connection with his employment;

"arrangements made by the Government" means arrangements made by the Department of Trade and Industry under approved training schemes.

"employer" has the meaning given to it by section 45(4) but, in relation to a worker (as defined in section 45(3)), includes in addition-

- (a) an agent or principal in relation to whom, by virtue of section 28(2), the provisions of the Act have effect as if there were a worker's contract between him and an agency worker for the doing of work by the agency worker, and
- (b) an employer of a home worker who is a worker by virtue of section 29;

"performance bonus" means a performance bonus or other merit payment attributable to the quality or amount of work done in the course of more than one pay reference period, and not therefore payable directly in respect of work done in specific hours;

"the total of reductions" means the total of reductions determined in accordance with regulations 31 to 37;

"the total of remuneration" means the total of money payments determined in accordance with regulation 30;

"pay reference period" has the meaning given to it by regulation 10;

"worker" has the same meaning as in section 45(3) of the Act but, includes in addition-

- (a) an agency worker in relation to whom, by virtue of section 28(2), the provisions of the Act have effect as if there were a worker's contract for the doing of his work between him and an agent or principal; and
- (b) a home worker who is a worker by virtue of section 29.

(2) In these Regulations "work" does not include work (of whatever description) relating to the employer's family household done by a worker where the following conditions are satisfied-

- (a) either-
  - (i) that the worker resides in the family home of the employer for whom he works,
  - (ii) that the worker is not a member of that family, but is treated as such, in particular as regards to the provision of accommodation and meals and the sharing of tasks and leisure activities;

(iii) that the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, in respect of the provision of the living accommodation or meals; and

(iv) that, had the work been done by a member of the employer's family, it would not be treated as being performed under a worker's contract or as being work because the conditions in sub-paragraph (b) would be satisfied;

(b) or-

(i) that the worker is a member of the employer's family,

(ii) that the worker resides in the family home of the employer,

(iii) that the worker shares in the tasks and activities of the family, and that the work is done in that context.

(3) In these Regulations "work" does not include work (of whatever description) relating to an employer's family business, done by a worker who satisfies the following conditions-

(a) that the worker is a member of the employer's family,

(b) that the worker resides in the family home of the employer,

(c) that the worker participates in the running of the family business,

where the work is done in that context.

(4) References in these Regulations to a numbered section are to that section of the Act.

#### *The meaning of time work*

3. In these Regulations "time work" means-

(a) work that is paid for under a worker's contract by reference to the time for which a worker works and is not salaried hours work;

(b) work that is paid for under a worker's contract by reference to a measure of the output of the worker per hour or other period of time during the whole of which the worker is required to work, and is not salaried hours work; and

- (c) work that would fall within paragraph (b) but for the fact that the worker is paid by reference to the length of the period of time alone when his output does not exceed a particular level.

*The meaning of salaried hours work*

4.- (1) In these Regulations "salaried hours work" means work which-

- (a) is done under a contract to do salaried hours work; and
- (b) falls within paragraph (6).

(2) A contract to do salaried hours work is a contract under which a worker-

- (a) is entitled to be paid for an ascertainable basic number of hours in a year ("the basic hours"); and
- (b) is entitled, in respect of hours that consist of or include the basic hours, to be paid an annual salary-
  - (i) by equal weekly or monthly instalments of wages, or
  - (ii) by monthly instalments of wages that vary but have the result that the worker is entitled to be paid an equal amount in each quarter, regardless of the number of hours in respect of which the worker is entitled to the annual salary that are actually worked by him (if any) in any particular week or month; and
- (c) has, in respect of those hours, no entitlement to any payment other than his annual salary or no such entitlement other than an entitlement to a performance bonus.

(3) A contract which satisfies the conditions in paragraph (2) does so-

- (a) whether or not all the basic hours are working hours;
- (b) whether or not the worker can be required under his contract to work, or does in fact work, any hours in addition to the total of hours in respect of which he is entitled to his annual salary, and regardless of any payments made in respect of those additional hours.

(4) Circumstances having the result that in practice a worker may not be or is not paid by equal instalments of wages, or by an equal amount in each quarter, for hours in respect of which he is entitled under his contract only to his annual salary do not prevent the contract from being a contract for salaried hours work, for example, where-

- (a) a worker may be awarded a performance bonus,
- (b) the amount of a worker's annual salary may be varied,
- (c) by virtue of regulation 22 or 23 the worker is entitled to a statutory minimum wage in respect of hours in addition to his basic hours when, under his contract, there is no entitlement to any payment in addition to his annual salary for those additional hours (or to no payment in addition other than a performance bonus), and
- (d) the worker's employment may start or terminate during a week or month with the result that the worker is paid a proportionate amount of his annual salary for the week or month in question.

(5) The fact that, by reason of an absence from work for hours in respect of which his annual salary is normally payable, a worker is entitled under his contract, in respect of those hours, to be paid less than he would be but for the absence or to no payment does not prevent the worker's contract from being a contract for salaried hours work.

(6) The work done under a contract to do salaried hours work that falls within this paragraph, and is therefore salaried hours work, is work in respect of which the worker is entitled to no payment in addition to his annual salary, or to no payment in addition to his annual salary other than a performance bonus.

(7) References in regulation 22 to work or hours of work in respect of which a worker is entitled to no payment other than his annual salary refer also to work or hours of work in respect of which the only payment to which the worker is entitled other than his annual salary is payment of a performance bonus.

#### *The meaning of output work*

5. In these Regulations "output work" means work which is paid for under a worker's contract that is not time work and, but for the effect of the Act and these Regulations or anything done pursuant to these Regulations, would be paid for under that contract wholly by reference to the number of pieces made or processed by the worker, or wholly by reference to some other measure of output such as the number or value of sales made or transactions completed by the worker or as a result of his work.

#### *The meaning of unmeasured work*

6. In these Regulations "unmeasured work" means any other work that is not time work, salaried hours work or output work including, in particular, work in respect of which there are no specified hours and the worker is required to work when needed or when work is available.

### *Travelling*

7. A worker is to be treated as travelling for the purposes of regulations 15(2), 16(2) and (5)(b), 17(1), 18(1) and 19(1)(b) if-

- (a) he is in the course of a journey by a mode of transport or is making a journey on foot;
- (b) he is waiting at a place of departure to begin his journey by a mode of transport;
- (c) where his journey is broken, he is waiting at a place of departure for his journey to re-commence either by the same or another mode of transport, except for any time during such a period he spends in taking a rest break; or
- (d) he is waiting at the end of a journey, in the case of regulations 15(2), 16(2), 17(1) and 18(1), for the purpose of carrying out his duties, or, in the case of regulations 16(5)(b) and 19(1)(b), to receive training, except for any time before he is due to carry out his duties or receive training which he spends in taking a rest break.

### *The meaning of payments*

8. References in these Regulations to payments paid by the employer to the worker are references to payments paid by the employer to the worker in his capacity as a worker before any deductions are made, excluding-

- (a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages;
- (b) any payment by way of a pension, by way of an allowance or gratuity in connection with the worker's retirement or as compensation for loss of office;
- (c) any payment of an award made by a court or tribunal or to settle proceedings which have been or might be brought before a court or tribunal, other than the payment of an amount due under the worker's contract;
- (d) any payment referable to the worker's redundancy;
- (e) any payment by way of an award under a suggestions scheme.

### *Benefits in kind not to count as payments*

9. For the purposes of these Regulations the following shall not be treated as payments by the employer to the worker-

- (a) any benefit in kind provided to the worker, whether or not a monetary value is attached to the benefit, other than living accommodation;
- (b) any voucher, stamp or similar document capable of being exchanged for money, goods or services (or for any combination of those things) provided by the employer to the worker.

*The pay reference period*

10.-(1) The pay reference period is a month or, in the case of a worker who is paid wages by reference to a period shorter than a month, that period.

(2) When a worker's contract terminates regulations 14 and 30 to 37 shall be applied in relation to payments made in the period of a month beginning with the day immediately following the last day on which the worker worked under the contract as if such payments had been made in the worker's final pay reference period.

## PART II

### THE RATE OF THE MINIMUM WAGE

#### *The rate and exclusions*

##### *The rate of the minimum wage*

11. The single hourly rate of the minimum wage is £4.10.

##### *Workers who do not qualify for the minimum wage*

12.--(1) Workers who have not attained the minimum school leaving age do not qualify for the minimum wage.

(2) A worker who-

- (a) has not attained the age of 25,
- (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 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 a formal training agreement with the Department of Trade and Industry.

(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 a scheme provided to him under arrangements made by the Government (other than arrangements falling within paragraph (3)), does not qualify for the minimum wage in respect of work done for his employer as part of that scheme.

(6) 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 statutory minimum wage in respect of work done for his employer as part of that course.

(7) For the purposes of paragraph (6) 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(a);

(b) in Scotland, a course of a description falling within section 38 of the Further and Higher Education (Scotland) Act 1992(b);

(c) in Northern Ireland, a course of a description referred to in Schedule I to the Further Education (Northern Ireland) Order 1997(c);

(d) in the Island, a course recognised as such by the Department of Education .

(8) A worker who satisfies the condition set out in paragraph (9) and is participating in a scheme which satisfies the conditions set out in paragraph (10), 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 minimum wage in respect of work performed for his employer under that scheme.

(9) A worker satisfies the condition referred to in paragraph (8) 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

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a) 1988 c. 40

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

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

(ii) was not entitled to receive either of those benefits only because he was not habitually resident in the Island.

(10) 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 (10), 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
- (d) the work done under the scheme is both provided by, and performed for, the person operating the scheme.

*Workers who qualify for the statutory minimum wage at a different rate*

13.--(1) The hourly rate of the minimum wage is £3.15 for a worker who has attained the minimum school leaving age but not the age of 17.

(2) The hourly rate of the minimum wage is £3.65 for a worker who has attained the age of 17 but not the age of 18

(3) The hourly rate of the minimum wage is £3.65 for a worker who-

- (a) has attained the age of 18;
- (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 approved by the Department of Trade and Industry;
- (b) 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 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;

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

### *Calculation of the hourly rate*

#### *Method of determining whether the 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).

(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.

### PART III

## WORKING TIME FOR THE PURPOSES OF THE MINIMUM WAGE

### *Provisions in relation to working time*

#### *Provisions in relation to time work*

15.-(1) In addition to time when a worker is working, time work includes time when a worker is available at or near a place of work, other than his home, for the purpose of doing time work and is required to be available for such work except that, in relation to a worker who by arrangement sleeps at or near a place of work, time during the hours he is permitted to sleep shall only be treated as being time work when the worker is awake for the purpose of working.

(2) Time when a worker is travelling for the purpose of duties carried out by him in the course of time work shall be treated as being time work except where-

- (a) the travelling is incidental to the duties, to the extent that the time is time when the worker would not otherwise be working; or
- (b) the travel is between the worker's home and his place of work or between an address where he is temporarily residing, other than for the purposes of performing work, and his place of work.

(3) For the purposes of paragraph (2)(a) travelling is incidental to the duties carried out by a worker unless duties involved in his work are necessarily carried out in the course of the travelling, as in the case of a worker driving a bus, conductor on a train or whose main duty is to transport items from one place to another.

(4) Where a worker's hours of work vary either as to their length or in respect of the time at which they are performed and, as a result, it is uncertain in relation to particular time when the worker is travelling whether he would otherwise be working, that time shall be treated, for the purposes of paragraph (2)(a), as time when he would otherwise be working.

(5) Except as mentioned in paragraph (2) and regulation 19, time work does not include time when a worker is absent from work.

(6) A worker engaged in taking industrial action in the course of time work shall be treated as being absent from work for the time during which he is so engaged.

(7) Where a worker is entitled to a rest break in the course of time work, the period of the break shall be treated as time when the worker is absent from work; but a worker shall not

be treated as being entitled to any rest breaks during time which is required to be treated as time work by paragraph (2).

*Provisions in relation to salaried hours work*

16.-(1) Time when a worker is available at or near a place of work, other than his home, for the purpose of doing salaried hours work and is required to be available for such work shall be treated as being working hours for the purpose of and to the extent mentioned in regulation 22(3)(d) and (4)(b) except that, in relation to a worker who by arrangement sleeps at or near a place of work, time during the hours he is permitted to sleep shall only be treated as being working hours when the worker is awake for the purpose of working.

(2) Time when a worker is travelling for the purpose of duties carried out by him in the course of salaried hours work shall be treated as being working hours for the purpose of and to the extent mentioned in regulation 22(3)(d) and (4)(b) except where-

(a) the travelling is incidental to the duties, to the extent that the time is time when the worker would not otherwise be working; or

(b) the travel is between the worker's home and his place of work or between an address where he is temporarily residing, other than for the purposes of performing work, and his place of work.

(3) For the purposes of paragraph (2)(a) travelling is incidental to the duties carried out by a worker unless duties involved in his work are necessarily carried out in the course of the travelling, as in the case of a worker driving a bus, conductor on a train or whose main duty is to transport items from one place to another.

(4) Where a worker's hours of work vary either as to their length or in respect of the time at which they are performed and, as a result, it is uncertain in relation to particular time when the worker is travelling whether he would otherwise be working, that time shall be treated, for the purposes of paragraph (2)(a), as time when he would otherwise be working.

(5) Time when a worker is-

(a) attending at a place other than his normal place of work, when he would otherwise be working, for the purpose of receiving training wholly or mainly in connection with salaried hours work that has been approved by his employer,

(b) travelling, when he would otherwise be working, between a place of work and a place where he is receiving such training, or

(c) receiving such training at his normal place of work,

shall be treated as working hours for the purpose of and to the extent mentioned in regulation 22(3)(d) and (4)(b).

*Provisions in relation to output work*

17.-(1) Time spent by a worker in travelling for the purposes of doing output work shall be treated as time spent doing output work except for time spent travelling between his home, or a place where he is temporarily residing, and-

- (a) premises from which he works; or
- (b) except in the case of a worker whose work consists in producing tangible items at his home, premises to which he reports.

(2) A worker shall not be treated as doing output work, for the purpose of regulation 24, during time when he is engaged in taking industrial action nor as having worked, for the purpose of regulation 26, during such time.

*Provisions in relation to unmeasured work*

18.-(1) Time when a worker is travelling for the purpose of unmeasured work shall be treated as being unmeasured work.

(2) A worker shall not be treated as carrying out his contractual duties to do unmeasured work, for the purpose of regulation 27, during time when he is engaged in taking industrial action, nor as being available to carry out those duties, for the purpose of regulation 29, during such time.

*Time spent on training to be time work*

19.-(1) Time when a worker is-

- (a) attending at a place other than his normal place of work, when he would otherwise be working, for the purpose of receiving training that has been approved by his employer,
- (b) travelling, when he would otherwise be working, between a place of work and a place where he is receiving such training, or
- (c) receiving such training at his normal place of work, shall be treated as time work.

(2) Where a worker's hours of work vary either as to their length or in respect of the time at which they are performed and, as a result, it is uncertain in relation to particular time when the worker is attending at a place or travelling, whether he would otherwise be

working, that time shall be treated for the purposes of paragraph (1)(a) or, as the case may be, (1)(b) as time when he would otherwise be working.

(3) Paragraph (1) does not apply in relation to training wholly or mainly in connection with salaried hours work.

### *The hours worked in a pay reference period*

#### *Time work*

20. The time work worked by a worker in a pay reference period shall be the total number of hours of time work done by him in the pay reference period.

#### *Salaried hours work*

21-(1) In this regulation, "the basic hours" means the basic number of hours in a year in respect of which a worker is entitled under his contract to his annual salary as ascertained in accordance with his contract on the first day of the pay reference period in question.

(2) Except as mentioned in paragraph (3) and regulations 22 and 23, the salaried hours work worked by a worker in a pay reference period shall be the basic hours divided by-

- (a) where the pay reference period is a week, 52;
- (b) where the pay reference period is a month, 12; and
- (c) where the pay reference period is any other period, by the figure obtained by dividing 365 by the number of days in the pay reference period (including non-working days).

(3) Where in a pay reference period-

- (a) a worker is absent from work for a number of hours in respect of which his annual salary is payable, and
- (b) is, for that reason, entitled to be paid less and is paid less than the normal proportion of his annual salary in respect of the pay reference period,

the salaried hours work worked by the worker in the pay reference period shall be the number of hours determined under paragraph (2) in relation to the pay reference period reduced by the number of hours referred to in sub-paragraph (a) of this paragraph.

(4) Hours in a pay reference period during which a worker is engaged in taking industrial action and in respect of which his annual salary is or, but for his engagement in the action, would be payable, shall be regarded as satisfying the requirements in sub-

paragraphs (a) and (b) of paragraph (3) whether or not the worker's entitlement to the normal proportion of his annual salary is affected by his engagement in the action and whether or not he is paid any amount in respect of those hours.

*Determining the hours of salaried hours work where the basic hours have been exceeded*

22.-(1) Where in any calculation year the total of the hours referred to in paragraph (3) exceeds the basic hours, this regulation, and not regulation 21, applies for the purpose of determining the salaried hours work worked by a worker in the pay reference period during which the basic hours are exceeded and in the subsequent pay reference periods (if any) in the calculation year.

(2) In this regulation and regulation 23-

"the basic hours" means-

- (a) in a calculation year when the basic number of hours in respect of which the worker is entitled under his contract to his annual salary is not varied, that basic number;
- (b) in a calculation year when that basic number of hours is varied-
  - (i) where the basic hours are determined in respect of the calculation year before the only or first variation takes effect, the basic number of hours ignoring the effect of the variation,
  - (ii) where the basic hours are determined after a variation has taken effect, the sum of the following numbers of hours-
    - (aa) for the period beginning with the day on which the variation in question takes effect until the end of the year, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, in accordance with that variation, in a year of 365 days, which the number of days in the period bears to 365,
    - (bb) for the period starting with the beginning of the year and ending with the day before the day on which the only or first variation took effect, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, before the variation, in a year of 365 days, which the number of days in the period bears to 365, and
    - (cc) where there has been more than one variation, for each period beginning with the day on which a particular variation took effect and ending on the last day before the next variation took

effect, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, in accordance with the earlier variation, in a year of 365 days, which the number of days in the period bears to 365,

but in applying regulation 22 for the purposes of paragraphs (5)(a) and (b)(i) and (6)(a) the definition of "the basic hours" in regulation 21(1) shall be used.

"calculation year" means-

- (a) in the case of a worker employed by an employer when these Regulations come into force, for so long as he continues in that employment, the year beginning on the day these Regulations come into force, and each subsequent year beginning on the anniversary of that day;
- (b) in the case of a worker whose annual salary is payable monthly and who becomes employed by an employer after these Regulations come into force, for so long as he continues in the same employment-
  - (i) where the worker becomes employed on the first day of a month, the year beginning with the first day of that month and each subsequent year beginning on the anniversary of that day,
  - (ii) where the worker becomes employed on any other day of a month, the period beginning with that day and ending with the day before the first anniversary of the first day of the next month, and each year beginning on that anniversary or on a subsequent anniversary of the first day of that month;
- (c) in the case of a worker whose annual salary is payable weekly and who becomes employed by an employer after these Regulations come into force, for so long as he continues in the same employment, the year beginning with the first day of his employment and each subsequent year beginning on the anniversary of that day.

(3) In determining for the purposes of paragraph (1) whether the basic hours have been exceeded by a worker in any calculation year and, if so, when they were exceeded, the following hours in that year shall be taken into account-

- (a) the number of the worker's working hours that fell within the basic hours,
- (b) the number of hours for which the worker has been absent from work that fell within the basic hours,

- (c) any hours worked by the worker outside the basic hours in respect of which the worker had no entitlement under his contract to any payment other than his annual salary,
- (d) time required to be treated as working hours by regulation 16, to the extent that such time consisted of hours in respect of which the worker had no entitlement under his contract to his annual salary or to any other payment,

but excluding the number of hours, if any, during which the worker was engaged in taking industrial action.

(4) In that part of the pay reference period during which the basic hours are exceeded which is referred to in paragraph (5)(b) and in each subsequent pay reference period (if any) in the calculation year, a worker shall be treated as working for the sum of the following-

- (a) the number of hours in the pay reference period that would have fallen to be taken into account under paragraph (3)(a) if the basic hours had not been exceeded, but excluding any time during those hours in which the worker was engaged in taking industrial action, and
- (b) time required to be treated as working hours by regulation 16, to the extent that such time consists of hours in respect of which the worker is not entitled under his contract to his annual salary or to any other payment,

and the number of hours determined under this paragraph is referred to in paragraphs (5) and (6) and in regulation 23(3) as "the actual working hours".

(5) The salaried hours work worked by a worker in the pay reference period during which the basic hours are exceeded shall be the sum of the following-

- (a) in relation to the part of the pay reference period before the day on which the basic hours are exceeded, the number of hours that result from applying regulation 21 to the part as if it were a pay reference period containing the number of days in the part; and
- (b) in relation to the part of the pay reference period beginning with the day on which the basic hours are exceeded, the sum of-
  - (i) the number of hours that result from applying regulation 21(2) to the part as if it were a pay reference period containing the number of days in the part, but ignoring any reduction required by regulation 21(3), and
  - (ii) the actual working hours in that part.

(6) The salaried hours work worked by a worker in each subsequent pay reference period until the end of the calculation year shall be the sum of-

- (a) the number of hours that result from applying regulation 21(2) in relation to the pay reference period, but ignoring any reduction required by regulation 21(3); and
- (b) the actual working hours in the pay reference period.

*Determining the hours of salaried hours work in certain cases where the employment terminates*

23.-(1) This regulation applies, in the circumstances specified in paragraphs (2) and (3), to the final pay reference period of a worker whose employment terminates in the course of a calculation year and in cases where the employment of a worker is treated as being terminated by virtue of paragraph (4). 14

(2) Where the basic hours have not been exceeded at the end of the final pay reference period but, at the end of that pay reference period, the total of the hours to be taken into account under regulation 22(3) since the beginning of the calculation year (the "A" hours) exceeds the total of the number of hours determined in accordance with regulation 21 in relation to all of the pay reference periods (including the final pay reference period) since the beginning of the calculation year (the "B" hours), the salaried hours work worked by the worker in that pay reference period shall be regarded as including (in addition to the number of hours determined in relation to the pay reference period in accordance with regulation 21) the number of hours by which the "A" hours exceed the "B" hours.

(3) Where the basic hours have been exceeded at any time during the calculation year before the end of the final pay reference period, the salaried hours work worked by the worker in that pay reference period shall be regarded as including (in addition to the number of hours determined in relation to the pay reference period in accordance with regulation 22(5) or, as the case may be, (6)) the number of hours that result from applying regulation 21(2) in relation to the period beginning with the day immediately following the last day of the worker's final pay reference period and ending at the end of the calculation year ("the subsequent period"), as if-

- (a) the whole of the subsequent period was a single pay reference period (containing the number of days in it), and
- (b) the worker had continued to be employed under his contract to do salaried hours work for the whole of the subsequent period and had not been absent from work during it for any hours in respect of which regulation 21(3) requires a reduction.

(4) Where a worker's contract is varied so that any salaried hours work required to be done under the contract becomes work that is not salaried hours work, this regulation shall apply as if-

- (a) the employment of the worker had been terminated; and
- (b) the last day of the worker's final pay reference period had fallen on the day before the day on which the variation took effect.

*Output work*

24.--(1) The output work worked by a worker in a pay reference period shall be the total number of hours spent by the worker during the pay reference period in doing output work, except where the output work is output work of the kind specified in paragraph (2) in relation to which the conditions in regulation 25(1) are satisfied.

(2) The kind of output work mentioned in the exception to paragraph (1) is output work in respect of which (apart from the effect of regulation 25 and any agreement made pursuant to that regulation)-

- (a) the worker's contract does not set any normal, minimum or maximum working hours; and
- (b) the employer does not in practice determine or control the hours worked by the worker.

*"Fair estimate" agreements for output work*

25.--(1) The conditions referred to in regulation 24 are-

- (a) that there is an agreement in writing between the worker and his employer, made at any time before the beginning of the pay reference period, that-
  - (i) contains a fair estimate of the number of hours of output work (including any time which is to be treated as output work) the worker is likely to spend in performing the work to be done in the pay reference period, and
  - (ii) requires the worker to keep a record of the hours of output work done by him in the pay reference period and to supply a copy of the record to the employer as soon as is reasonably practicable after the end of it; and
- (b) that the worker is contractually entitled to be paid the agreed rate for each piece produced or agreed rate of commission for each sale made or transaction completed by him in the pay reference period or, as the case may be, for each sale made or transaction completed as a result of output work done by him in the pay reference period.

(2) An estimate of the number of hours a worker is likely to work purporting to satisfy the condition in paragraph (1)(a)(i) is not a fair estimate if the employer cannot show that

the number is at least four-fifths of the number of hours that an average worker doing the same work as the worker in the same working circumstances and producing, by reference to the same measure of output, the same output would on average spend working in a pay reference period.

(3) Unless otherwise agreed the agreement referred to in paragraph (1)(a) has effect solely for the purpose of determining the amount of output work the worker is to be treated as doing for the purpose of these Regulations and does not vary the worker's contract.

*Determining the hours of output work where there is a 'fair estimate' agreement*

26.-(1) In paragraph (2) the term "ascertained hours" means the fair estimate of hours contained in an agreement referred to in paragraph (1)(a) of regulation 25.

(2) Where the conditions in regulation 25(1) are satisfied in relation to output work of the kind specified in regulation 24(2), the output work worked by a worker in the pay reference period in respect of the work covered by the agreement in question shall be treated as being-

- (a) where in the pay reference period the worker has worked for the ascertained hours or longer (including any time which is to be treated as output work), the ascertained hours; or
- (b) where in the pay reference period the worker has worked for less than the ascertained hours, the total of the number of hours he has worked (including such time).

*Unmeasured work*

27. Unless the condition in regulation 28(1) is satisfied, the unmeasured work worked by a worker in a pay reference period shall be the total of the number of hours spent by him during the pay reference period in carrying out the contractual duties required of him under his contract to do such work.

*"Daily average" agreements for unmeasured work*

28-(1) The condition referred to in regulation 27 is that there is an agreement in writing between the worker and his employer, made at any time before the beginning of the pay reference period, determining the average daily number of hours the worker is likely to spend in carrying out the duties required of him under his contract to do unmeasured work on days when he is available to carry out those duties for the full amount of time contemplated by the contract.

(2) The condition in paragraph (1) is not satisfied if the employer cannot show that the average daily number of hours determined is a realistic average.

(3) Unless otherwise agreed the agreement referred to in paragraph (1) has effect solely for the purpose of determining the amount of unmeasured work the worker is to be treated as having worked for the purpose of these Regulations and does not vary the worker's contract.

*Determining the hours of unmeasured work where there is a "daily average" agreement*

29.-(1) In paragraph (2) the term "ascertained hours" means the number of hours of unmeasured work that would have been worked by the worker in a pay reference period if he had worked-

- (a) on each day worked by him in the pay reference period on which he was available to carry out his duties for at least the full amount of time contemplated by the contract, for the average daily number of hours specified in the agreement referred to in regulation 28(1); and
- (b) on each day worked by him in the pay reference period on which he was available to carry out his duties for only part of that amount of time, for the proportion of that average number of hours which the part bears to the full amount of time contemplated by the contract.16

(2) Where the condition in regulation 28(1) is satisfied the hours of unmeasured work worked by a worker in the pay reference period shall be treated as being the ascertained hours.

## PART IV

### REMUNERATION COUNTING TOWARDS A MINIMUM WAGE

#### *Payments to the worker to be taken into account*

30. The total of remuneration in a pay reference period shall be calculated by adding together-

- (a) all money payments paid by the employer to the worker in the pay reference period;
- (b) any money payments paid by the employer to the worker in the following pay reference period in respect of the pay reference period (whether in respect of work or not);
- (c) any money payment paid by the employer to the worker later than the end of the following pay reference period in respect of work done in the pay reference period, being work in respect of which-
  - (i) the worker is under an obligation to complete a record of the amount of work done,
  - (ii) the worker is not entitled to payment until the completed record has been submitted by him to the employer, and
  - (iii) the worker has failed to submit a record before the fourth working day before the end of that following pay reference period,

provided that the payment is paid in either the pay reference period in which the record is submitted to the employer or the pay reference period after that;

- (d) where the employer has provided the worker with living accommodation during the pay reference period, but in respect of that provision is neither entitled to make any deduction from the wages of the worker nor to receive any payment from him, the amount determined in accordance with regulation 36.

#### *Reductions from payments to be taken into account*

31.-(1) The total of reductions required to be subtracted from the total of remuneration shall be calculated by adding together-

- (a) any money payments paid by the employer to the worker in the pay reference period that, by virtue of regulation 30(b) or (c), are required to be included in the total of remuneration for an earlier pay reference period;

(b) in the case of-

- (i) work other than salaried hours work, any money payments paid by the employer to the worker in respect of periods when the worker was absent from work or engaged in taking industrial action;
- (ii) salaried hours work, any money payment paid by the employer to the worker attributable to the hours (if any) by which the number of hours determined under regulation 21(2) is required to be reduced under regulation 21(3) (worker entitled to less than normal proportion of annual salary because of absence from work), whether under the direct application of those regulations or the application of them required by regulation 22(5)(a);

(c) any money payments paid by the employer to the worker in respect of-

- (i) time work worked by him in the pay reference period involving particular duties that is paid for at a higher rate per hour than the lowest rate per hour payable to the worker in respect of time work worked by him involving those duties during the pay reference period, to the extent that the total of those payments exceeds the total of the money payments that would have been payable in respect of the work if that lowest rate per hour had been applicable to the work;
  - (ii) particular output work worked by him in the pay reference period that is paid for at a higher rate than the normal rate applicable to that work by reason of the work being done at a particular time or in particular circumstances, to the extent that the total of those payments exceeds the total of the money payments that would have been payable in respect of the work if the normal rate had been applicable to the work;
- (d) any money payment paid by the employer to the worker by way of an allowance other than an allowance attributable to the performance of the worker in carrying out his work;
- (e) any money payment paid by the employer to the worker representing amounts paid by the customers by way of a service charge, tip, gratuity, or cover charge;
- (f) any money payment paid by the employer to the worker to meet a payment by the worker that would fall within regulation 34(1)(b) (payments by workers on account of expenditure in connection with their employment to persons other than their employer) but for the worker's payment being met or designed to be met by the employer;
- (g) any deduction falling within regulation 32;

- (h) any payment made by or due from the worker in the pay reference period falling within regulation 34;
- (i) the amount of any deduction the employer is entitled to make, or payment he is entitled to receive from the worker, in respect of the provision of living accommodation by him to the worker in the pay reference period, as adjusted, where applicable, in accordance with regulation 37, to the extent that it exceeds the amount determined in accordance with regulation 36.

(2) To the extent that any payment or deduction is required to be subtracted from the total of remuneration by virtue of more than one sub-paragraph of paragraph (1), it shall be subtracted only once.

*Deductions to be subtracted under regulation 31(1)(g)*

32.-(1) The deductions required to be subtracted from the total of remuneration by regulation 31(1)(g) are-

- (a) any deduction in respect of the worker's expenditure in connection with his employment;
- (b) any deduction made by the employer for his own use and benefit (and accordingly not attributable to any amount paid or payable by the employer to any other person on behalf of the worker), except one specified in regulation 33.

(2) To the extent that any deduction is required to be subtracted by virtue of both subparagraphs of paragraph (1), it shall be subtracted only once.

*Deductions not to be subtracted under regulation 31(1)(g)*

33. The deductions excepted from the operation of regulation 32(1)(b) are-

- (a) any deduction in respect of conduct of the worker, or any other event, in respect of which he (whether together with any other workers or not) is contractually liable;
- (b) any deduction on account of an advance under an agreement for a loan or an advance of wages;
- (c) any deduction made to recover an accidental overpayment of wages made to the worker;
- (d) any deduction in respect of the purchase by the worker of any shares, other securities or share option, or of any share in a partnership.

*Payments made by or due from a worker to be subtracted under regulation 31(1)(h)*

34.-(1) The payments made by or due from the worker required to be subtracted from the total of remuneration by regulation 31(1)(h) are-

- (a) any payment due from the worker to the employer in the pay reference period on account of the worker's expenditure in connection with his employment;
- (b) any payment paid in the pay reference period on account of the worker's expenditure in connection with his employment to the extent that the expenditure consists of a payment to a person other than the employer and is not met, or designed to be met, by a payment paid to him by the employer;
- (c) any other payment due from the worker to the employer in the pay reference period that the employer retains or is entitled to retain for his own use and benefit except for a payment required to be left out of account by regulation 35.

(2) To the extent that any payment is required to be subtracted by virtue of more than one sub-paragraph of paragraph (1), it shall be subtracted only once.

*Payments not to be subtracted under regulation 31(1)(h)*

35. The payments excepted from the operation of regulation 34(1)(c) are-

- (a) any payment in respect of conduct of the worker, or any other event, in respect of which he (whether together with any other workers or not) is contractually liable;
- (b) any payment on account of an advance under an agreement for a loan or an advance of wages;
- (c) any payment made to refund the employer in respect of an accidental overpayment of wages made by the employer to the worker;
- (d) any payment in respect of the purchase by the worker of any shares, other securities or share option, or of any share in a partnership;
- (e) any payment in respect of the purchase by the worker of any goods or services from the employer, unless the purchase is made in order to comply with a requirement in the worker's contract or any other requirement imposed on him by the employer in connection with his employment.

*Amount permitted to be taken into account where living accommodation is provided*

36.-(1) The amount referred to in regulations 30(d) and 31(1)(i) is whichever is the lesser of the following-

- (a) the amount resulting from multiplying the hours of work done in the pay reference period (determined in accordance with regulations 20 to 29) by 50p, and reducing that product by the proportion which the number of days (if any) in the pay reference period for which living accommodation was not provided bears to the total number of days in the pay reference period; or
- (b) the amount resulting from multiplying the number of days in the pay reference period for which living accommodation was provided by £2.85.

(2) For the purposes of paragraph (1), living accommodation is provided for a day only if it is provided for the whole of a day from midnight to midnight.

*Adjusted deductions and payments in respect of living accommodation*

37.-(1) Where an employer is entitled to make deductions or receive payments in respect of the provision of living accommodation to a worker and in a pay reference period-

- (a) a worker is absent from work for a day or more when, but for his absence, he would be expected to perform time work (for example because he is sick or taking a holiday),
- (b) during that period of absence he is paid, for the hours of time work for which he is absent, an amount not less than the amount to which he would have been entitled under these Regulations, but for his absence,
- (c) the hours of time work worked by the worker in the pay reference period are, by reason of his absence, less than they would be in a pay reference period containing the same number of working days in which the worker worked for the normal number of working hours (and for no additional hours), and
- (d) the amount of the deduction the employer is entitled to make or payment he is entitled to receive in respect of the provision of living accommodation to the worker during the pay reference period does not increase by reason of the worker's absence from work,

the provisions of paragraph (2) shall apply.

(2) For the purposes of regulation 31(1)(i), the amount of the deduction the employer is entitled to make or payment he is entitled to receive in respect of the provision of living

accommodation shall be adjusted by multiplying that amount by the number of hours of time work actually worked by the worker in the pay reference period (as determined in accordance with regulation 20) and dividing the figure so obtained by the total number of hours of time work the worker would have worked in the pay reference period (including the hours of time work actually worked) but for his absence.

**PART V**  
**RECORDS**

*Records to be kept by an employer*

38-(1) The employer of a worker who qualifies for a minimum wage shall keep in respect of that worker records sufficient to establish that he is remunerating the worker at a rate at least equal to the statutory minimum wage.

(2) The records required to be kept under paragraph (1) shall be in a form which enables the information kept about a worker in respect of a pay reference period to be produced in a single document.

(3) The employer of a worker who qualifies for the minimum wage who has entered into any agreement with the worker referred to in regulations 13(2)(d) (accredited training), 25(1) (output work) or 28(1) (unmeasured work), shall keep a copy of that agreement.

(4) The employer of a worker who qualifies for an agricultural minimum rate of wages shall, in addition to the records he is required to keep under paragraphs (1) and (3), keep in respect of that worker records sufficient to establish that he is remunerating the worker at a rate at least equal to any agricultural minimum rate of wages applicable to the worker.

(5) In paragraph (4), "agricultural minimum rate of wages" means a minimum rate of wages fixed under section 2(1)(a) of the Agricultural Wages Act 1952

(6) Where under paragraph (4) an employer is required to keep records in respect of a worker in addition to those he is required to keep under paragraph (1), those additional records shall be in a form which enables the information kept under paragraph (4) about a worker in respect of a pay reference period to be produced in a single document.

(7) The records required to be kept by this regulation shall be kept by the employer for a period of three years beginning with the day upon which the pay reference period immediately following that to which they relate ends.

(8) The records required to be kept by this regulation may be kept by means of a computer.

MADE 13<sup>TH</sup> JULY 2001

  
Minister for Trade and Industry