

dti

NATIONAL MINIMUM WAGE

A detailed guide to the
National Minimum Wage

REVISED OCTOBER 2004



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We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

A minimum wage helpline run by the Inland Revenue is available if you require further clarification on any aspect of the minimum wage. The helpline also deals with complaints about non-payment. Workers' details will remain confidential.

Helpline 0845 6000 678

National Minimum Wage Detailed Guide – Updating Insert for 2004 Edition

National Minimum Wage Rates: October 2005 (paragraphs 48-50)

Since the October 2004 edition of the detailed guide was published the minimum wage rates have increased. On 1 October 2005 the main rate of the minimum wage increased to £5.05 an hour. The rate applies from a workers 22nd birthday. For workers aged 18-21 (inclusive) the rate increases to £4.25 per hour. From 1 October 2005 workers aged 22 or over who are starting a new job with a new employer and receiving accredited training must also be paid a development rate of at least £4.25 per hour for the first six months and £5.05 thereafter. The rate for workers under 18 and over compulsory school leaving age remains at £3 per hour.

It is important to note that these new rates only apply to pay reference periods (see chapter 6) beginning on or after the date they came in to law.

Accommodation offset (paragraphs 110-113)

On 1 October 2005 the accommodation offset was increased to £27.30 per week (£3.90 per day).

Training schemes to be treated like apprenticeships (paragraph 31)

The written agreements or contracts no longer have to be agreed by a representative of the funding body.

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1 Introduction

Aim of the guidance

- 1 This booklet provides guidance on workers' rights and employers' obligations under the National Minimum Wage Act 1998 and the subsequent secondary legislation, especially the National Minimum Wage Regulations 1999. The regulations were most recently amended by the National Minimum Wage Regulations 1999 (Amendment) Regulations 2004. The booklet's aim is to help employers ensure that they pay their workers at least the national minimum wage, and to help workers establish that they are getting what they are entitled to.
- 2 This chapter summarises the things that workers and employers need to know about their rights. Chapters 2 to 16 explain how the rules work, including: who is entitled to the minimum wage; how much it is; the hours for which it must be paid; and how to calculate whether someone's pay is in line with the minimum wage. Chapter 17 explains what records employers need to keep. Chapter 18 looks at how the minimum wage will be enforced. Chapter 19 lists the most frequently asked questions about the minimum wage and Chapter 20 gives contact details for further information.
- 3 **The information contained in this booklet gives only general guidance and should not be regarded or relied upon as a complete and authoritative statement of the law. The examples and boxed information are for illustrative purposes only and should not be regarded as definitive. To keep this document as concise as possible, we have used 'he' and 'his' to refer to both male and female workers and employers.**

- 4 Further assistance may be obtained by telephoning the minimum wage helpline (run by the Inland Revenue) on **0845 6000 678** or certain other specific information lines listed in Chapter 20.

Using the guidance to check pay against the national minimum wage

- 5 To check whether someone's pay is in line with the minimum wage, you can step through the guidance as follows:

Check who must get the minimum wage

Chapter 2

Find out the rate of the minimum wage

Chapter 5

Make sure you know what the pay reference period is

Chapter 6

Check what payments count and do not count

Chapters 7–8

Check the type of work and the hours which count

Chapters 10–14

Calculate the hourly rate of pay

Chapter 16

Things that employers need to know

- 6 Employers should note that:
 - they are required by law to ensure that their workers are paid at least the minimum wage;
 - they need to keep records sufficient to prove that they are paying the minimum wage to their workers;

- they may be required by a Minimum Wage Compliance Officer, by an employment tribunal or by a civil court to produce evidence that they have paid the minimum wage;
 - if they fail to produce records to a worker on request, he may complain to an employment tribunal which can impose a penalty;
 - where a tribunal or civil court is making a decision on a minimum wage case, the burden will always be on the employer to prove that the minimum wage has been paid;
 - where an employer has failed to pay the minimum wage, he can be required to pay arrears through the issuing of an enforcement notice;
 - if the enforcement notice is not complied with, compliance officers have the power to issue a penalty notice against the employer;
 - it is a criminal offence to refuse to pay the minimum wage, to obstruct compliance officers or not to keep proper records (see also paragraph 228). Fines for these offences can be up to £5,000.
- 7** It is against the law to dismiss or victimise a worker because of the minimum wage. If a worker is dismissed because he is going to get the minimum wage or a higher rate of the minimum wage, this will be an unfair dismissal.

Things that workers need to know

- 8** Workers should note that:
- if they believe they are not getting the minimum wage, they are entitled to see the records relating to their rate of pay which their employer must hold;

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- if they want to complain that their employer has not paid the minimum wage or has not allowed them to see their records, they can make a complaint to the minimum wage helpline, or take their case to an employment tribunal or civil court independently;
 - they are legally protected against being sacked or victimised because of their right to the minimum wage or because they have complained about non-payment.
- 9** An employer may not force or persuade any worker to agree to a wage below the minimum wage. The law prevents workers from signing away their right to the minimum wage.

2 Who must get the national minimum wage?

Workers

- 10** Most adult workers in the United Kingdom are entitled to be paid at least the minimum wage. If you have a contract of employment you are a worker. Even if you do not have a contract of employment, you are a worker if you are doing work personally for someone else (under a “worker’s” contract) and are not genuinely self-employed. The contract does not need to be written; it may be an implied contract or an oral contract. People such as home workers, agency workers, casual labourers, part-time workers and workers on short-term contracts are all entitled to the minimum wage. It does not matter how a worker is paid – by the month, week, day, session, hour or some other way.

Agency workers

- 11** If someone is supplied by an agent or agency to do work for somebody else, he is a worker and must receive at least the minimum wage. The agency worker will be entitled to the minimum wage and the employer is whoever pays him.

Agricultural workers

- 12** The rules apply to agricultural workers, who are also covered by the agricultural minimum wage. No agricultural worker may be paid less than the national minimum wage. Some agricultural workers must be paid more than the national minimum wage because there is a higher agricultural minimum wage. (See also Chapter 15.)

Homeworkers

- 13** Homeworkers are entitled to the minimum wage unless they are running their own business. If a homeworker is over 18 years of age (or 16–17 and above school leaving age) and is working for another person or company they are probably entitled to the minimum wage, even if the supplier of the homework tells them that they are self-employed.

The minimum wage must be paid to workers who work at home as well as to those who work at their employer's premises or elsewhere away from home. Homeworkers must receive at least the minimum wage, even if they pass some of the work to others such as close friends or family.

Many homeworkers are paid according to the amount of work they complete. If they are paid according to their output (i.e. by piece rates) their employer will need either to:

- pay the worker the minimum wage for every hour they actually work; or
- pay a fair piece rate for every piece made or task performed.

Homeworkers should not simply rely on their tax status, as a person who has been assessed as 'self-employed' by the Inland Revenue for tax purposes will not necessarily be self-employed for the purposes of the minimum wage. If they are unsure they should contact the minimum wage helpline on 0845 6000 678.

Piece workers

- 14** Piece workers are paid by the number of things they produce rather than the number of hours they work. Some piece workers work at home. Other piece workers work in factories. Piece workers must be paid at least the minimum

wage or a fair piece rate and there are special rules for working this out (see Chapter 13).

Commission workers

- 15** Some workers are paid entirely or partly on the basis of sales made or deals completed. These “commission workers” must also be paid at least the minimum wage.

Workers with a disability

- 16** The entitlement to the minimum wage applies to all workers regardless of individual levels of ability, productivity or effectiveness. So if a person with a disability is a ‘worker’ (see paragraph 10) then they must be paid at least the minimum wage. However, some people with a disability undertake work-related activities for therapeutic reasons. Where these people are undertaking a purely therapeutic activity with no contractual obligation to work or right to any payment or other reward, they will not count as workers and will not be entitled to the minimum wage.

The DTI has produced an information note “The Minimum Wage and Therapeutic Work” which can be obtained from the DTI publications orderline tel: 0870 1502 500.

Seafarers

- 17** Seafarers are covered by the minimum wage legislation whilst employed to work on a United Kingdom registered ship working in the United Kingdom or its internal waters (i.e. estuaries and, also, the sea between the United Kingdom mainland and many islands).

In addition, when working on board a ship registered in the United Kingdom, a seafarer must be paid at least the

minimum wage (wherever in the world that ship may be) unless:

- all his work takes place outside the United Kingdom (and its internal waters); or
- he is not normally resident in the United Kingdom and the ship is outside the United Kingdom (and its internal waters).

Offshore workers

- 18** Offshore workers must be paid at least the minimum wage if they work in United Kingdom territorial waters, in the United Kingdom sector of the continental shelf or the foreign sector of a cross-boundary petroleum field which is partly in the United Kingdom sector. Offshore workers are entitled to the minimum wage whether or not they or their employer are based in the United Kingdom itself.

Workers from outside the United Kingdom

- 19** All workers who are working legally in the United Kingdom must be paid at least the minimum wage for the hours they work in this country. Foreign workers working in the United Kingdom are entitled to the minimum wage in exactly the same way as any other worker, regardless of how long or short their stay may be. It does not matter whether their employer is based in the United Kingdom or in another country.

Workers working outside the United Kingdom

- 20** Workers who usually work in the United Kingdom but who are working temporarily outside the United Kingdom must be paid at least the minimum wage.

The situation for any particular worker will depend on his individual arrangements and the terms of his contract. But if a worker works overseas for the majority of the time, then he does not need to be paid the minimum wage for the overseas work. He is likely, however, to be covered by the employment rules in the countries where he works.

3 Who need not get the national minimum wage?

The genuinely self-employed

- 21** The minimum wage does not apply to the genuinely self-employed. In most cases it is easy to distinguish between someone who is self-employed and someone who is a “worker”. If a person is self-employed they probably agree a price for the job with the customer in advance and are paid by an invoice or a bill at the end. They control their own time and decide whether or not to take each job. They provide their own equipment, and keep the profit they make or bear any loss themselves.

Sometimes it is not easy to tell if a person is really self-employed. For example, if they are paid ‘commission-only’ they may control their own time and keep a share of any profits they make, but they may not be genuinely self-employed if it is not them but someone else (their employer) who has to bear any losses that are made.

They should not simply rely on their tax status, as a person who has been assessed as ‘self-employed’ by the Inland Revenue for tax purposes may not necessarily be self-employed for the purposes of the minimum wage. If they are unsure they should contact the minimum wage helpline on 0845 6000 678. If a dispute goes to court, the tribunal will look at all the facts – such as those described above.

It is important to note that the law on the minimum wage reverses the burden of proof, so it will always be for an alleged employer to prove that he does not employ any person who he claims is self-employed.

Company directors

- 22** The minimum wage does not apply to company directors unless they have contracts that make them workers. Company directors are office holders in common law and can do work and be paid for it in that capacity. This is true no matter what sort of work is done or how it is rewarded.
- 23** However, company directors who have employment contracts will need to be paid the minimum wage. If a company director is unsure whether he has entered into an employment contract with his company he may wish to take legal advice.

Some apprentices

- 24** Apprentices who are under the age of 19 are not entitled to the minimum wage. To check who counts as an “apprentice”, see paragraphs 27-31 below.
- 25** Apprentices aged 19 to 25 who are in the first 12 months of their apprenticeship are not entitled to the minimum wage. For example, someone starting an apprenticeship just before his 19th birthday would not need to be paid the minimum wage until just before his 20th birthday.
- 26** Anyone working on specified Government schemes at pre-apprenticeship level is not entitled to the minimum wage.

Example 1: Apprentice starting at age 16

A young worker starts a four-year apprenticeship at 16 years old. Apprentices aged 16 and 17 are exempt from the minimum wage, as are 18 year olds. Therefore, it is not until the fourth year of the apprenticeship, when reaching the age of 19, that he must be paid at least the development rate.

- 27** Apprentices as far as the minimum wage is concerned are either:
- workers who have contracts of apprenticeship; or
 - workers who are taking part in the specific training programmes – see paragraph 30 below
- 28** Some trainees who take part in the schemes mentioned at paragraph 30 below are not employed by the business for whom they do work. These individuals are not workers at all and are therefore not entitled to the minimum wage.

Contracts of apprenticeship

- 29** A contract of apprenticeship has been defined by the Court of Appeal as “a contract in which a master undertakes to educate and train the apprentice in the practical and other skills needed to practise a skilled trade (or profession) and the apprentice binds himself to serve and work for the master and comply with all reasonable directions”. Generally speaking, it will be a written contract which should specify the rights and obligations of both the employer and the apprentice; what training is to be provided and to what level; the length of the apprenticeship and the rates of pay. But in the event of a dispute as to whether any particular contract is a “contract of apprenticeship”, it must ultimately be a matter for the courts or tribunals to decide.

Training schemes to be treated like apprenticeships

- 30** Workers engaged through the following schemes are to be treated as if they have a contract of apprenticeship:
- in England, Apprenticeships or Advanced Apprenticeships;
 - in Scotland – Skillseekers or Modern Apprenticeships;

Who need not get the national minimum wage?

- in Northern Ireland – Jobskills Traineeships or Modern Apprenticeships;
 - in Wales, Modern Apprenticeships or Foundation Modern Apprenticeships.
- 31** Trainees on these courses should normally have written agreements or contracts with their employer. These should be agreed by a representative of the funding body (for example, the local LSC in England, ELWa in Wales). For people in England details of the programmes are available from the LSC via its helpline 0870 900 6800 or via a local LSC or ELWa on 08456 088 066 for people in Wales. In Scotland details are available from Careers Scotland, the Local Enterprise Companies and the relevant Sector Skills Council. In Northern Ireland details are available from the Department of Employment and Learning on 028 904 41875.

Some other trainees on Government-funded schemes

- 32** Persons on specified Government schemes at pre-apprenticeship level are not entitled to the minimum wage, whether they are employed by the employer or not.
- 33** These schemes are:
- in England, Entry to Employment;
 - in Scotland, Get Ready for Work;
 - in Northern Ireland, Access;
 - in Wales, Skillbuild.

Some trainees on programmes supported by the European Social Fund

- 34** The European Social Fund provides assistance to a wide range of Governmental, regional and local training schemes. Trainees taking part in schemes that receive funding from the European Social Fund only need to be paid the minimum wage if they have a contract of employment with their employer.

Students doing work experience as part of a higher education course

- 35** Students who are studying on higher education courses or undertaking a course of initial training for teachers at UK universities or colleges are sometimes placed with an employer as part of their course. As long as the placement is for a maximum period of a year such students need not be paid the minimum wage for the work that they do while with the employer. Of course, most students are not placed with employers as part of their course but may simply work to fund their studies, the minimum wage applies to them in the same way as it does to anyone else.
- 36** Students who are under 18 and above compulsory school leaving age who are taking a “gap year” between school and further/higher education must be paid at least the minimum wage for any work they do.

People living and working within the family

- 37** People who live as part of a family (but who are not members of the family) and who share in the work and leisure activities of the household do not need to be paid the minimum wage. This may apply, for example, to workers such as au pairs, nannies and companions who are treated

Who need not get the national minimum wage?

as a member of the family. Living as part of the family means, in particular, sharing in tasks and leisure activities on the same basis as other family members.

- 38** The minimum wage does not need to be paid to family members living at home who help out with household chores. Neither does it need to be paid to workers who participate in the running of the family business, so long as they are members of their employer's family and share his home.

Friends and neighbours

- 39** The minimum wage does not need to be paid when jobs are done under informal arrangements between people. For example, someone who helps out a neighbour by doing the shopping – and who receives a token payment in return – is not entitled to the minimum wage unless there is a binding contract. Similarly, someone who cleans a friend or neighbour's car on this basis cannot claim the minimum wage.

Members of the armed forces

- 40** The minimum wage does not apply to members of the armed forces, including reservists when they are serving. But civilians in an association of reservists, or civilians working for the Ministry of Defence must be paid at least the minimum wage.

Share fishermen

- 41** Share fishermen are fishermen who do not receive a fixed wage or salary but who agree among themselves to divide up the proceeds or profits from a catch. The minimum wage does not apply to share fishermen.

Prisoners

- 42** A prisoner working under prison rules is not entitled to be paid the minimum wage.

Voluntary workers

- 43** Volunteers (who provide their time and effort completely freely) need not be paid the minimum wage because they do not have any contractual arrangement and therefore are not workers. But some people who consider themselves “volunteers” could still be workers because they receive some sort of payment or benefit in kind in return for the work they do. If the arrangements amount to a contract (written, verbal or implied) then these workers are entitled to the national minimum wage unless:
- they work for a charity, voluntary organisation, charity shop, school, hospital or similar body; and they receive only reasonable expenses, relevant training and/or subsistence (but not money for subsistence). Regular payments are likely to give the volunteer the right to the minimum wage. However, a genuine “honorarium” in the form of a gift with no obligation and of a reasonable amount is not likely to give the volunteer the right to the minimum wage; or
 - they are placed by a charity or similar body with another charity or similar body and they also receive money for subsistence: for example, voluntary workers who have been placed with a hospital or charitable care home by a charity which specialises in such placements, and who are provided with some money to cover living expenses.

Example 2: Volunteers, voluntary and charity workers

- 1 A member of a charity who helps out from time to time at jumble sales for no pay and under no obligation is not entitled to the minimum wage. He does not have any form of contract and does not count as a “worker”.
- 2 A worker for a community group who has set hours and is paid a wage is entitled to the minimum wage. He fits the definition of a worker and whether the employer in such cases is a charity or voluntary organisation is irrelevant.
- 3 A volunteer worker in a hostel with charitable status who receives free accommodation and food as well as expenses for any travel undertaken as part of the job, but who does not receive any monetary payments, is not entitled to the minimum wage.
- 4 The person who works in a hostel but who receives cash payments such as a regular wage is likely to be entitled to the minimum wage even if he is described or regarded as a volunteer.

Religious and other communities

- 44 A residential member of a community does not qualify for the minimum wage in respect of employment by the community, providing that:
- the community is a charity or is established by a charity;
 - that a purpose of the community is to practice or advance a belief of a religious or similar nature, and;
 - all or some of its members live together for that purpose.

This does not apply to a community which is an independent school or provides a course of further or higher education.

4 Who must pay the national minimum wage?

Who is the employer?

- 45** In general, a worker's employer will be obvious – it is the person with whom the worker has a contract and who pays his wages.
- 46** The situation may be less clear for workers supplied by an agency. Sometimes there will be a contract which states whether the employer is the agency or the client to whom the worker is supplied. If there is no such contract, the employer is whoever is responsible for paying the worker. If neither the agency nor the client accepts responsibility, the employer is whoever actually pays the worker.
- 47** Sometimes a worker is employed by another worker, for example, a supervisor engaged to work for a contractor. If the work is done on the contractor's premises, then both the supervisor and the contractor count as the worker's employer.

5 The national minimum wage rate

The main rate of the minimum wage

48 On **1 October 2004** the main minimum rate changed to £4.85 an hour for workers aged 22 and over.

The development rate for 16–17 year olds and 18–21 year olds

49 On **1 October 2004** a minimum wage of £3.00 an hour was introduced for 16–17 year olds (who are above school leaving age). The 18–21 (inclusive) rate changed to £4.10 an hour.

The £4.10 rate for people doing accredited training

50 There is an accredited training rate of £4.10 an hour for workers aged 22 years and over who are starting a new job with a new employer and doing accredited training (explained in paragraph 54 below). This rate can be paid only for the first six months of the new job, after which the worker must be paid at least the main minimum wage hourly rate.

When and how the rates apply

51 It makes no difference how a worker is paid (monthly, weekly, daily, hourly, by session). The minimum wage still applies.

- 52** Employers and workers need to know when the different rates apply. For example, at age 21 a worker is entitled to the development rate but on reaching his 22nd birthday he becomes entitled to the main rate. The rate applicable in a pay reference period is the rate payable on the first day of the period. In the previous example, therefore the worker is entitled to the main rate from the first pay reference period starting after his 22nd birthday.
- 53** Since the development rate is dependent solely on age, employers may need to ask workers to provide proof of their age.

Accredited training

- 54** The accredited training rate applies for no longer than the first six months during which a worker aged 22 or more is doing accredited training in a new job with a new employer. It can only be paid when the employer and worker have a written agreement. The agreement must specify that the worker will take part in a course of accredited training on at least 26 days during the first six months of employment.

Employers must keep a copy of the agreement for three years and be able to produce it on request. Training does not have to be for a full 26 days but it must be received on at least 26 days within the six-month period. Participation at an accredited training course may be at or away from the workplace but must be during normal working hours.

- 55** “Accredited training” means the following in each part of the United Kingdom:

Box 1: Accredited training: England and Wales

- 1** A course which leads to an external qualification approved under section 98 or 99 of the Learning and Skills Act 2000 for the purposes of section 97 of that Act. There are a wide range of vocational and vocationally related qualifications which are listed on the Section 97 website: www.dfes.gov.uk/section97. Those without internet access may obtain a print-out of this list by contacting Michaela Benson (DfES) on 0114 259 4997.
- 2** Accredited training in Wales:- the range of qualifications approved under Section 99 of the Learning and Skills Act 2000 are listed on the Welsh Assembly Government website: www.wales.gov.uk/subeducationtraining/content/circulars/1502/circular1502-list-e.pdf.

Box 2: Accredited training: Scotland

- 1** A course or programme to obtain a vocational qualification. Such qualifications are a Scottish Vocational Qualification (SVQ); or other vocational qualification accredited or awarded by the Scottish Qualifications Authority (SQA). Further information about qualifications, which count as accredited training for workers in Scotland, can be obtained from:

The Scottish Qualifications Authority
Hanover House
24 Douglas Street
Glasgow G2 7NQ
Tel: 0845 279 1000

- 2** For workers aged 22 or more who are participating in the New Deal programme for 18-24 year olds and who receive a wage (see paragraph 32), accredited training also includes a programme of learning which:
- prepares a person for a vocational qualification;
 - prepares a person for a qualification awarded or accredited by the Scottish Qualifications Authority;
 - provides instruction for persons participating in the above categories who have a learning difficulty;
 - prepares a person for access to higher education;
 - is designed to assist persons whose first language is not English to achieve any level of competence in English language.

For enquiries about accredited training courses and New Deal participants, contact The Scottish Qualifications Authority, tel: 0845 279 1000.

Box 3: Accredited training: Northern Ireland

- 1** A course which prepares a student to obtain a vocational qualification. Such qualifications are a National Vocational Qualification (NVQ) or other vocational qualification approved by the Department for Employment and Learning. Further information about qualifications which can count as accredited training for workers in Northern Ireland can be obtained from:

The Department for Employment and Learning
Adelaide House
39–49 Adelaide Street
Belfast BT2 8FD
Tel 028 902 57400

- 2** Company training which has been certified as including at least 50 percent of the requirements of one or more National Vocational Qualifications by an awarding body.
- 3** For workers aged 22 or more who are participating in the New Deal programme for 18–24 year olds and who receive a wage (see paragraph 32), accredited training also includes participation in a course which prepares New Deal participants to obtain a vocational qualification. Such courses are those which lead to National Vocational Qualifications (NVQs), General National Vocational Qualifications (GNVQs) or other vocational qualifications accredited by nationally recognised awarding bodies and approved by the Department for Employment and Learning for New Deal funding purposes. For enquiries about accredited training courses and New Deal participants, contact the Department for Employment and Learning (details above).

6 The pay reference period

What is the pay reference period for?

56 The pay reference period is the period by reference to which a worker is paid and is the basis of calculating whether the minimum wage has been paid. The worker does not have to be paid the minimum wage for each hour worked, but must be paid the minimum wage on average for the time worked in the pay reference period.

How long is the pay reference period?

57 The pay reference period is usually the period of time for which a worker's wage is actually calculated. So, workers who are paid weekly will have a pay reference period of one week, workers paid daily will have a pay reference period of one day and workers who are paid monthly will have a pay reference period of one month. For the purposes of the minimum wage a pay reference period cannot be longer than one calendar month. So, employers who wish to pay their workers at intervals more than a month apart, such as those who wish to pay quarterly, will still need to make sure that workers receive the minimum wage at least as regularly as once a month in order to comply with the law. The following paragraphs explain how pay is allocated to pay reference periods.

How does the pay reference period work?

58 The pay that is allocated to a pay reference period is:

- pay received during that period; and
- pay earned in that period, but which is not received until the next period. For example, a worker may do some

overtime or earn an extra bonus or commission towards the end of the current period. It may not be possible to calculate the earnings in time to get the money into the pay packet for the current period. But the money will still be counted in the current period when it comes to calculating whether the minimum wage has been paid, provided it is received in the next period. It should be noted that payment delayed by more than one pay reference period cannot be referred back to the period it was earned in but simply counts in the period it is paid.

- 59** In cases where payment is not made in the period in which it is earned it will not be possible to tell whether a worker has received the minimum wage for the current pay reference period until the end of the next. Any pay “transferred” in this way from the period when it was received to the period when it was earned must stay transferred. It cannot also be allocated to the pay reference period when it was actually received as this would clearly be double counting.
- 60** Example 3 shows how the pay reference period operates.

Example 3: How the pay reference period operates

A shop worker who is paid solely by commission over a four-week pay reference period and whose hours are recorded at 38 hours a week, earns and receives the following each week:

	Week 1	Week 2	Week 3	Week 4
Commission earnings	£200.00	£190.00	£180.00	£190.00
If averaged weekly, hourly rate would be	£200/38 = £5.26/hr	£190/38 = £5.00/hr	£180/38 = £4.74/hr	£190/38 = £5.00/hr

Over the four-week pay reference period, the shop worker has been paid an average of £5.00 an hour – which is above the main minimum wage rate of £4.85 an hour (October 2004 rate).

- 61** In Example 4, the worker is paid £4.85 an hour for 38 hours a week and can earn overtime payments. Overtime payments are not made until the pay reference period that follows the current pay reference period in which the overtime is worked. But the sum of these overtime payments can be included in the calculation of minimum wage pay in the current pay reference period. In the example, overtime is counted at the standard rate of pay because the premium element does not count towards minimum wage pay (see Chapter 8).

Example 4: Allocating overtime pay to the previous pay reference period

	Pay reference period 1	Pay reference period 2	Pay reference period 3
A: Hours worked			
Normal	38	38	38
Additional hours	6 (paid in period 2)	3 (paid in period 3)	2 (paid in period 4)
B: Payment			
Normal	$£4.85 \times 38$ = £184.30	$£4.85 \times 38$ = £184.30	$£4.85 \times 38$ = £184.30
Additional hours	None	$£4.85 \times 6$ = £29.10	$£4.85 \times 3$ = £14.55
C: National minimum wage calculation	$£184.30$ + £29.10 = £213.40	$£184.30$ + £14.55 = £198.85	$£184.30$ + £9.70 = £194.00
D: Hourly Rate	$£213.40/44$ = £4.85	$£198.85/41$ = £4.85	$£194.00/40$ = £4.85

- 62** In Example 5, commission payments are made to the worker in the pay reference period which follows the pay reference period in which they were earned. However, when minimum wage pay is calculated for each period, the commission payment earned in the current pay reference period can be included in the calculation of minimum wage pay in that period, even if it is not paid until the following pay reference period.

Example 5: Allocating commission pay to the previous pay reference period

	Pay reference period 1	Pay reference period 2	Pay reference period 3
A: Hours worked	38	38	38
B: Commission value of sales made	£30 (paid in period 2)	£58 (paid in period 3)	£10 (paid in period 4)
C: Payment received			
Hourly pay	£4.00 x 38 = £152	£4.00 x 38 = £152	£4.00 x 38 = £152
Commission	None	£30	£58
Total pay received in period	£152	£182	£210
D: National minimum wage calculation	£152 + £30 = £182.00	£152 + £58 = £210	£152 + £10 = £162
E: Average hourly national minimum	£182 ÷ 38 = £4.79	£210 ÷ 38 = £5.53	£162 ÷ 38 = £4.26

Does not comply with the national minimum wage.

Allocating annual bonuses

- 63** Most of an annual bonus received in a pay reference period will count only in that period. However, a proportion of the bonus can count towards pay allocated to the previous pay reference period. For example, if an annual bonus is paid in

December and the pay reference period is one month, one twelfth of the bonus can be allocated towards minimum wage pay in November. The rest of the bonus will count towards minimum wage pay in December.

Example 6: Allocating an annual bonus to a pay reference period

A worker is paid 12 monthly instalments of an annual salary of £9,000. He receives a bonus payment in December of £500 for work performance in the 12 months ending on 31 December.

Calculation for January – October:

Salary of £9,000 ÷ 12 = monthly payment of £750

Therefore the hourly minimum wage pay in each of January – October is £750 monthly payment ÷ monthly working time of 152 hours = £4.93

None of the £500 bonus can count towards minimum wage pay for these months.

Calculation for November:

Salary of £9,000 ÷ 12 = monthly payment of £750

Amount of bonus to be taken into account is the proportion which relates to the particular month:
£500 ÷ 12 = £41.67

Total minimum wage payment for November is:

£750 + £41.67 = £791.67

Therefore, the hourly minimum wage pay is that month's payment of

£791.67 ÷ monthly working time of 152 hours = £5.21

Calculation for December:

Salary of £9,000 ÷ 12 = monthly payment of £750

Amount of bonus to be taken into account is the remaining amount after deducting the amount of bonus allocated to

November: £500 – £41.67 = £458.33

Total minimum wage payment for December is:

£750 + £458.33 = £1,208.33

Therefore, the hourly minimum wage pay is that month's payment of £1,208.33 ÷ monthly working time of 152 hours = £7.95

Allocating pay based on timesheets

- 64** Some workers, typically agency workers, are paid according to timesheets agreed by the client for whom they are working and sent to the agency for payment of the wage. Special rules for allocating pay to the correct pay reference period may apply in such cases.
- 65** The basic rule is that, where pay is based in whole or in part on the hours recorded on a timesheet, the pay for those hours will count towards the minimum wage calculation for that period, provided the pay is received either in that period or the next one. For this to happen, the timesheet must be sent promptly to the agency or employer who must also process it in time to get it into the pay packet for the current reference period or the next one.
- 66** Special rules apply if the timesheet is received late. If the worker hands in the timesheet less than four working days before the end of the period following the one when the work was done, the payment for that time can be paid

either in the period when the timesheet was received or in the next one and will still count in the pay reference period when it was earned.

Example 7: Allocating pay based on timesheets

A worker is paid weekly based on timesheets recording hours worked, at £4.85 an hour. He sends in the timesheet promptly in the week after the work done, for the first two weeks' pay. In the fourth week he fails to send in the timesheet in time for the third week's pay to be calculated. It is not handed in until the fifth week, together with the timesheet for week 4. The amount for the timesheet handed in late is counted towards minimum wage pay for week 3, even though the worker did not receive any money during that week.

	April 1–7 (week 1)	April 8–14 (week 2)	April 15–21 (week 3)	April 22–28 (week 4)	May 5 (week 5)
Hours worked	20	20	20	20	20
Timesheet handed in		8 April (for week 1)	17 April (for week 2)		29 April (for week 3)
					30 April (for week 4)

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	April 1–7 (week 1)	April 8–14 (week 2)	April 15–21 (week 3)	April 22–28 (week 4)	May 5 (week 5)
Payment received		£97 on 14 April (week 1)	£97 on 20 April (week 2)	Nil	£97 on 3 May (week 3) £97 on 5 May (week 4)
Counts towards minimum wage in	£97 week 1	£97 week 2	£97 week 3	£97 week 4	

7 What counts as national minimum wage pay?

Special make-up of national minimum wage pay

- 67** To see whether a worker's pay is in line with the minimum wage, it must be calculated in a particular way. Various specific components of a worker's pay can be counted towards minimum wage pay. Other components must be excluded.
- 68** This chapter explains what counts towards minimum wage pay. Chapter 8 explains what does not count. This must be checked carefully when calculating whether the pay received is in line with the national minimum wage. Wrongly including an element of pay that does not count – for example, an unconsolidated regional allowance or extra premium for overtime – could result in the minimum wage appearing to be paid when it is not.

Gross pay: payments excluded

- 69** The starting-point is gross pay, that is, the pay received by the worker before deducting tax and National Insurance contributions. Gross pay, for the minimum wage, excludes any of the payments in Box 8 below:

Box 4: Payments excluded from gross pay

- A loan
- An advance of wages
- A pension payment
- A lump sum on retirement
- A redundancy payment
- A reward under a staff suggestions scheme

- 70** These and other payments excluded from gross pay are explained in more detail in Chapter 8.
- 71** The basic calculation for each pay reference period is as outlined in Box 5:

Box 5: Basic calculation of national minimum wage pay

Total gross pay minus Box 4 payments and payments and deductions which do not count (Chapter 8) equals national minimum wage pay

Particular elements of pay that count

- 72** In addition to a worker's basic pay that he receives for the work he has done, there are other elements of pay that count towards minimum wage pay. These are explained in paragraphs 73-75.

Incentive pay

- 73** Payments made as part of an incentive, merit or any performance-related pay scheme count towards minimum

wage pay. This includes payments related to output like piecework pay and sales commissions.

Bonuses

- 74** Bonus payments count towards minimum wage pay. Paragraph 63 explains how bonuses should be allocated to the pay reference period.

Tips paid through the payroll

- 75** Only tips, gratuities or service charges which are paid by the employer to the worker through the payroll count towards the minimum wage. Tips and gratuities that are paid directly to the worker by the customer and kept by the worker do not count. If tips are gathered and then passed to an independent troncmaster for payment, that money will not count towards the minimum wage.

Particular deductions from pay that count

- 76** An employer may make deductions from the worker's pay and usually does, if only for income tax and employee's National Insurance contributions. Such deductions are ignored for national minimum wage purposes. Other deductions from pay are explained in paragraphs 77-83.

Deduction of income tax and National Insurance contributions.

- 77** Minimum wage pay is calculated on gross pay, that is, before deduction of income tax and National Insurance contributions.

Deduction of a penalty

- 78** If an employer deducts a sum from the worker's pay because of some event, for example, misconduct, where the employer is permitted to make the deduction under the terms of the contract, the deduction is ignored in calculating minimum wage pay.

Deduction for an advance of wages

- 79** If the employer has provided an advance of wages and subsequently deducts a sum for repayment of all or part of the advance of wages, the deduction is ignored in calculating minimum wage. This matches the treatment of the advance of pay which is excluded from gross pay (see box 4 above).

Example 8: Treatment of an advance of wages

A worker normally receives £1,000 a month. In November he applies for and receives an advance of his December pay of £500. His employer subsequently deducts that £500 from the worker's December pay. Assuming that the whole of the standard pay of £1,000 counts towards minimum wage pay, the advance is treated as follows:

	November	December
Money received:	£1,000 standard + £500 in advance Total: £1,500	£500
Amount that counts towards minimum wage pay	£1,500 – £500 = £1,000	£500 + £500 (deduction) = £1,000

Deduction to pay for purchase of shares or securities by the worker

- 80** A worker who buys shares or securities in his firm may want to pay for them by having a deduction made from his pay. If the employer deducts the purchase price from the worker's pay, the deduction counts towards minimum wage pay.

Deduction to recover an accidental overpayment of wages

- 81** Where an employer finds that he has accidentally overpaid a worker and then makes a deduction from the worker's pay to recover the overpayment, the deduction counts towards minimum wage pay.

Deductions that are not for the employer's own use or benefit

- 82** A worker may want to have other sums deducted automatically from his pay, for example, a union subscription or the worker's pension contribution. Such deductions from wages count towards minimum wage pay, so long as they are not for the employer's own use or benefit. In other words, so long as they are deductions that do not go into the employer's pocket.
- 83** Any deductions that an employer makes for his own benefit, for example, a deduction for meals, cannot be counted towards minimum wage pay.

Particular payments by the worker

- 84** Instead of making deductions from the worker's pay for the items covered in paragraphs 78–81, the employer may ask the worker – or the worker may volunteer – to pay the money direct to the employer. In such circumstances, the same principles apply as above, and the amount of the payment is not taken away from the amount that counts towards minimum wage pay. Therefore, if a worker pays to the employer: a penalty payment, a repayment of a loan or advance of wages; a payment for purchase of shares or securities in the firm; or a refund of an accidental overpayment of wages, there is no reduction in the amount counting towards minimum wage pay. In practice, this means that the worker cannot subsequently claim that, as a result of making any of these payments, he has not been paid the minimum wage.

Payment for goods and services provided by the employer

- 85** A worker may want to buy goods (shoes, clothing, hi-fi) or services (for example, meals) from his own employer. If he is completely free to choose whether to buy from his employer or from somewhere else, the amount of the purchase price is not taken away from the amount that counts towards minimum wage pay. The worker cannot subsequently claim that by having bought the items from his employer, he has not been paid the minimum wage.
- 86** The important point, though, is that he must not be required to buy from the employer. If he is required to buy goods or services from the employer, the amount that he pays has to be taken away from the amount that counts towards the minimum wage. In effect this would be a payment in kind rather than payment in wages and, apart from accommodation provided by the employer, national

minimum wage legislation does not allow payments in kind to count as a payment (see paragraph 104).

Example 9: Goods and services provided by the employer

- 1** A bank requires its workers to bank with it. Any payment that a worker has to make for banking services will not count towards minimum wage pay. But if the worker freely chooses to bank with his employer, his payment for banking services will count towards minimum wage pay.
- 2** A hotel, youth hostel or holiday centre requires its workers to purchase accommodation with it. Anything that the worker pays for accommodation over and above the permitted offset (see Chapter 9) will not count towards minimum wage pay.
- 3** A company requires its workers to eat meals in its canteen. Payment for the meals will not count towards minimum wage pay. However, if a worker freely chooses to eat from time to time in a company canteen, his payment for meals will not reduce his pay for minimum wage purposes.

Accommodation at or below the limit

- 87** If an employer provides accommodation to a worker, he can deduct an amount from the worker's pay or can charge the worker for the accommodation. There is a limit to the amount of the deduction or charge that can be taken into account when calculating minimum wage pay. Chapter 9 deals with the accommodation offset.

Box 6: Summary of what counts as national minimum wage pay

Gross pay excluding items in Box 4 but including:

- incentive pay;
- bonuses;
- payments by an employer said to relate to tips and paid through the payroll;
- income tax and employee's National Insurance contributions;
- deduction or payment of a penalty;
- deduction or payment to repay a loan;
- deduction or payment to repay an advance of wages;
- deduction or payment to pay for purchase of shares or securities;
- deduction or payment to refund accidental overpayment of wages;
- union subscriptions;
- worker's pension contribution;
- any deduction made by the employer but not for his use or benefit;
- unforced payments by the worker for goods and services from the employer;
- accommodation up to the limit explained in Chapter 9.

8 What does not count as national minimum wage pay?

Gross pay: payments excluded

88 For convenience, the box used in Chapter 7 to show payments that do not count as gross pay is reproduced below. Since the payments do not count as gross pay, they do not count towards minimum wage pay.

Box 7: Payments excluded from gross pay

- a loan;
- an advance of wages;
- a pension payment;
- a lump sum on retirement;
- a redundancy payment;
- a reward under a staff suggestions scheme.

Particular elements of pay that do not count

89 In addition to the payments indicated above, there are other elements of a worker's pay that do not count towards minimum wage pay. They must all therefore be subtracted from gross pay. These are described in paragraphs 90–95.

Overtime and shift premia

- 90** A worker might be paid at a higher rate for working at a particular time: for example, for working overtime, weekend or night shifts, or on Bank Holidays. If so, the premium element (the element above the normal rate) of the payment does not count towards minimum wage pay.
- 91** To calculate the premium element, the employer must subtract the lowest basic rate that is paid to the worker from the worker's actual rate of pay. The result (the premium) does not count towards minimum wage pay.

Example 10: Treatment of overtime premium

A worker works a basic 20 daytime hours at £4.85 an hour. He works an additional 5 hours at night from Monday to Friday which is paid at a premium rate of £5.00 an hour. He works 4 hours overtime on Saturday which is paid at a premium rate of £5.20 an hour.

Amount to be subtracted from gross pay:

- 5 hours night work during the week at premium rate of £5.00: $(£5.00 - £4.85) \times 5 = £0.75$ premium element;
- 4 hours overtime on Saturday at premium rate of £5.20: $(£5.20 - £4.85) \times 4 = £1.40$ premium element

*£4.85 is the lowest basic rate paid and is therefore the rate that must be subtracted from the actual pay rate in order to arrive at the 'premium' payment.

Total of the premium element is $£0.75 + £1.40 = £2.15$. Therefore, £2.15 is subtracted from gross pay in order to calculate minimum wage pay.

- 92 However, if the worker is paid different basic rates for different jobs or duties, rather than premium rates for the same job, then the whole of each rate can be included in the calculation of minimum wage pay. For example, a worker works part of the day doing semi-skilled work on a machine and is paid £6.00 an hour, but helps clean the factory for another part of the day and is paid £5.00 an hour. There is no premium to subtract in this case.

Example 11: Treatment of overtime premium

This example shows how the minimum wage would be reached if all pay was included; but also how, when the overtime premium is deducted as the rules require, the minimum wage has not been reached and the worker is due more pay.

A worker works 40 hours a week and is paid £188.00 basic pay (equivalent to £4.70 an hour), but also works 8 hours overtime paid at £6.00 an hour.

Total pay for the week is therefore:

Basic pay:		£188.00
Overtime	8 x £6.00	£48.00
		£236.00

The worker worked 48 hours in the week so the hourly amount of pay received was $£236.00 \div 48 = £4.92$.

This is above the £4.85 minimum wage, so the employer might think that he complies with the minimum wage.

However, the premium element of the overtime cannot count towards the minimum wage. The minimum wage calculation should be:

Basic pay:		£188.00
Overtime	8 x £6.00	£48.00
		£236.00

Minus overtime premium	8 x £1.30	£10.40
Minimum wage pay		£225.60

The worker's hourly rate for comparison with the minimum wage is therefore: $£225.60 \div 48 = £4.70$.

This does not comply with the national minimum wage and the employer will have to pay the difference of £0.15 an hour x 48 = £7.20.

Allowances

- 93** Special allowances over and above standard pay are sometimes paid by an employer to a worker for all kinds of things: for working in dangerous conditions; working unsocial hours; working in a particular area (for example, London Weighting); performing special duties over and above a worker's normal duties; being "on call" for work. Such allowances do not count towards minimum wage pay unless they are consolidated into standard pay. If they are consolidated, they do count towards minimum wage pay.

Expenses

- 94** Expense payments or allowances for clothing, travel, subsistence, etc, do not count towards minimum wage pay.

Refund of money spent on work

- 95** If an employer refunds money to a worker which the worker has spent on something to do with his job, the refund does not count as minimum wage pay. This applies, for example, when an employer refunds travel expenses, laundry costs or the price of tools or equipment which the worker has purchased from someone else.

Particular deductions from pay that do not count

- 96** Deductions made by the employer which do not count towards minimum wage pay are dealt with in paragraphs 97–99.

Deductions for expenditure connected with the job

- 97** Deductions which an employer makes to cover the cost of items or expenses that are necessary for the worker's job do not count towards minimum wage pay. For example, if the employer deducts an amount from pay to cover the cost of safety clothing, a uniform, tools or other equipment needed for the job, the amount deducted reduces pay. The employer must pay the worker the minimum wage in addition to the cost of the tools etc.

Deductions for the employer's own use or benefit

- 98** If the employer makes any deduction from the worker's pay which is for his own use or benefit (for example, a deduction for meals), the amount deducted will not count towards minimum wage pay.

Particular payments by the worker that do not count

- 99** Instead of making deductions from the worker's pay for the items covered in paragraphs 97 and 98, the employer may ask the worker – or the worker may volunteer – to pay the money direct to the employer. If this happens, the same principles apply and the amount of the payment can be taken away from the amount that counts towards minimum wage pay.

Payments for expenditure connected with the job

100 If the worker has to buy tools, equipment, uniform or other items from his employer in order to do his job, the amount paid has to be taken away from the amount that counts towards minimum wage pay. The employer must pay the worker the minimum wage in addition to the cost of the tools etc.

Payments made by the worker to another person

101 If a worker is expected to pay, for example, his own travel costs or board and lodging when he is doing his job, the payments he makes have to be taken away from the amount that counts towards the minimum wage.

Payments by the worker to the employer for the employer's own use and benefit

102 As explained in paragraph 85, payments which the worker is required to make and which the employer keeps for his own use and benefit have to be taken away from the amount that counts towards the minimum wage.

Accommodation above the limit

103 If an employer provides accommodation to a worker, he can deduct an amount from the worker's pay or can charge the worker for the accommodation. There is a limit to the amount of the deduction or charge that can count towards minimum wage pay. If the employer deducts or charges more than the limit, the excess amount does not count towards minimum wage pay. Chapter 9 explains how to work out the accommodation offset in detail.

Box 8: Summary of what does not count as national minimum wage pay

- items in Box 7, plus;
- overtime and shift premia;
- allowances that are not consolidated into pay;
- expenses;
- refund of money spent on work;
- deduction or payment for tools, uniform, etc.;
- deduction or payment for the employer's own use or benefit;
- payments by the worker to another person connected with the job;
- accommodation above the limit explained in Chapter 9.

9 Benefits in kind and accommodation

Treatment of benefits in kind

- 104** No benefits in kind count towards minimum wage pay, except accommodation. The special rules on accommodation are explained in paragraphs 108–113.
- 105** It makes no difference whether a value is attached to the other benefits. Neither does it make any difference whether the benefit is taxable or not. It remains open, of course, to the employer to offer such benefits to the worker. But, if he does, the value or notional value of the benefits cannot be counted towards minimum wage pay.

Box 9: Examples of benefits in kind that do not count:

- meals;
- luncheon vouchers;
- fuel;
- car;
- employer's contribution to the worker's pension fund;
- assistance with removals;
- medical insurance.

Only accommodation within the limits explained below can be counted towards national minimum wage pay.

Meals do not count towards national minimum wage pay

- 106** Meals do not count towards minimum wage pay and an employer cannot offer meals as part of a package that makes up minimum wage pay.
- 107** This does not mean that employers who already charge for meals will have to stop charging, for example, in a staff canteen. An employer could require a worker to eat in the staff canteen and then deduct an amount automatically for meals. But if he did, any such deduction would not count towards minimum wage pay (see also paragraphs 83 and 98).

Treatment of accommodation

- 108** Accommodation is the single exception to the rule about benefits in kind. Sometimes, an employer may make a specific deduction for accommodation from the worker's pay; or he may charge a specific amount once the worker has received his pay.
- 109** Other employers may not do either, but simply provide accommodation on an uncharged basis as part of a package. In all these cases, the rules allow accommodation to count towards minimum wage pay.

How to calculate the accommodation offset

- 110** There is a limit on the amount that an employer providing accommodation can count towards minimum wage pay.
- 111** The daily accommodation offset is calculated at a daily rate of £3.75 from **1 October 2004** for each day that the employer makes the accommodation available.

- 112** It will be clear from the above that the maximum permitted weekly offset is 7 x the daily rate of £3.75 i.e. £26.25 from 1 October 2004.
- 113** An employer may charge or deduct more than the maximum permitted weekly accommodation offset from a worker's pay but the excess amount above the maximum permitted accommodation offset will reduce minimum wage pay.

Example 12: How the offset counts towards minimum wage pay

Assume the worker is paid £6.00 an hour for a 28 hour week and rent of £45 a week is deducted for the accommodation which is available six days a week (note: other deductions, for example, for tax and National Insurance, are not included in this example)

Weekly pay $\text{£}6.00 \times 28 = \text{£}168.00$

Minus rent charged: $\text{£}45.00$

Total pay received $\text{£}123.00$

To see whether the national minimum wage has been paid:

Start with weekly pay: $\text{£}168.00$

Identify the applicable offset: $\text{£}3.75 \times 6 = \text{£}22.50$

Subtract the offset from rent charged: $\text{£}45 - \text{£}22.50 = \text{£}22.50$

Subtract this excess above the offset from pay:
 $\text{£}145.50$

Total pay for national minimum wage = $\text{£}145.50$

Divide national minimum wage pay by hours:

$\text{£}145.50 \div 28 = \text{£}5.20$ an hour

10 Hours for which the national minimum wage must be paid: the four different types of work

Hours for which the minimum wage must be paid

- 114** The hours for which the minimum wage must be paid depends on the type of work that the worker is doing.
- 115** There are four types of work: time work; salaried-hours work; output work and unmeasured work. The rules and calculation of hours differ for each.
- 116** The type of work does not depend on the worker's occupation. Instead, it depends on the basis on which he is paid.
- 117** Time work is dealt with in Chapter 11. Salaried-hours work is dealt with in Chapter 12; output work in Chapter 13 and unmeasured work in Chapter 14.
- 118** It is important to note that any one worker might do different types of work for the same or (more usually) different employers. In that case, the rules and calculation of hours apply differently for each type of work that the worker does.
- 119** Where this guidance refers to "time worker", "piece worker", "salaried hours worker" etc, it means a person who is doing that particular type of work at the time.

11 Hours for which the national minimum wage must be paid: time work

- 120** Please ensure that you have read chapter 10 on 'different types of work' before you read this chapter.
- 121** If a worker is paid according to the number of hours he is at work, the work is time work. It may be four hours one day; six hours the next; four hours the following day; or eight hours every day.
- 122** Alternatively, the worker may be on a contract for a week or a month to do a particular job and be paid for the hours done each week or month. That is also time work. Generally speaking, anybody whose pay goes up or down depending on the actual hours they work is likely to be doing time work.
- 123** The time work rules also apply when a person doing piece work is expected to work for a set number of hours per day.
- 124** For example, a piece worker in a factory may be expected to clock in and out every day and to be working for that time. That work will count as time work even where pay is calculated by reference to the amount of work done.

Example 13: Time work for piece workers doing set hours

An employer runs a factory in which workers are required to be at work for 8 hours a day. The workers are currently paid according to how much they produce in that time. Because the workers are required to be at work for 8 hours a day, their work must be treated as time work and they must be paid the minimum wage for that time.

- 125** Whatever the level of the piece rate, the workers are time workers and must receive, on average, at least the minimum wage for each hour in the pay period.

Example 14: Calculation of minimum wage pay for piece workers with set hours

A worker is required by the employer to work 40 hours over a 5-day working week at the factory. He is paid each week. This counts as time work. He makes garments at a piece rate of £1.70 per garment. Normally, he can produce 3 items an hour and earn £5.10.

However, for the first hour each day, his production is not up to normal speed. He produces only 2 garments and earns £3.40 an hour: £1.45 less than the minimum wage.

The employer is not required to pay him an extra £1.45 for that hour, provided that the worker's weekly earnings, when averaged over the weekly working hours, are at least £4.85 an hour.

Earnings: 35 hours at £5.10 (3 garments an hour)	= £178.50
5 hours at £3.40 (2 garments an hour)	= £17.00
Total	= £195.50

Average hourly rate: £195.50 divided by 40 working hours = £4.89. Earnings comply with the minimum wage.

What hours of work count for time workers?

126 In general, the times when a time worker is required to be available for work, as well as times when he is actually working at the workplace, must be included in the calculation for minimum wage pay. The times when a time

Hours for which the national minimum wage must be paid: time work

worker is absent from work (tea breaks, lunch breaks) should be excluded from the calculation. This does not mean that the worker should not be paid for tea breaks or lunch breaks, it simply means that in calculating the hours for minimum wage purposes, the length of the rest breaks are ignored.

Time spent at or near the workplace

127 A time worker must be paid at least the minimum wage for the times when:

- he is at work and required to be at work (excluding rest breaks). Workers who turn up to work as required and who are available for work must be paid the minimum wage during that time. It makes no difference whether or not work is actually provided for that time;
- he is on standby or on-call at or near the place of work. If the worker is waiting to be given work, the minimum wage is payable for that time. However, a worker who is on standby or on-call, as opposed to working, when he is at home, or is entitled to be at home, does not have to be paid the minimum wage for that time, regardless of where he works;
- he is kept at his place of work but is unable to work because plant or machinery has broken down.

Example 15: Time spent at or near the workplace

- 1** A worker is called into a factory to help with an urgent order, but there is a delay in materials being delivered. While the worker is at the factory and is ready and available for work, he must be paid the minimum wage for this time, even though he cannot do any work.
- 2** A chauffeur is at the office of his employer waiting to start a journey. He would need to be paid the minimum wage for this 'on-call' time.
- 3** A factory worker is told to wait at a factory for when work is available. He would need to be paid the minimum wage for this 'on-call' time.
- 4** A worker is 'on-call' at home to do some urgent work over the weekend. He does not have to be paid the minimum wage for the time when he is 'on-call' – but he does have to be paid it after he has arrived at work and during the time when he is working.

Travelling time on business

128 There are some periods of travel time when the minimum wage must be paid. These include time when a worker:

- is travelling in connection with his work during normal working hours or the normal range of hours that the worker does. This includes rest breaks (for example lunch, tea) taken on board the train, bus, plane etc. But travel between home and work and back again does not count as time when the minimum wage is payable;

Hours for which the national minimum wage must be paid: time work

- is waiting for a train or changing trains or other form of transport. However, if time spent waiting coincides with a rest break, for example a lunch or a tea break, it does not count as time when the minimum wage is payable;
- is travelling from one work assignment to the next. But rest breaks in the travelling do not count;
- is waiting to collect goods, to meet someone in connection with his work or to start a job. That time counts as time when the minimum wage is payable;
- is travelling to training during normal working hours. Travel from work to the place of training counts as time when the minimum wage should be paid. But travel between home and the place of training does not count.

Example 16: Travel time on business

- 1 On a normal day, a worker leaves home at 8.00am to travel to his normal place of work to begin work at 9.00am. The worker's normal working day is from 9.00am to 5.00pm with a lunch break from noon to 1.00pm. On a particular day, he is required to leave his normal place of work at 3.00pm to travel for 30 minutes to a client on the business of his employer. This time must be included as time worked for minimum wage calculation purposes.

- 2** A person is employed as a salesman. He starts work at 9.30am when he visits his first customer. That appointment lasts for half an hour until 10.00am. He then travels for one-and-a-half hours without any break to his second appointment which is at 11.30am. The period that he travels between appointments, as well as for the period when he is working with his customers must be treated as time worked for minimum wage calculation purposes.
- 3** A delivery driver is required to collect goods at 11.00am, but the goods have not arrived at the depot. The driver has to wait an hour for them to arrive. This hour has to be treated as if it was travel time and must be treated as time worked for minimum wage calculation purposes.
- 4** A care worker has an assignment at 9.00am followed by a half-hour assignment at 9.30am to which he travels direct. He must be paid the minimum wage from 9.00am to 10.00am. After the second appointment he has a further appointment at noon but returns home in the meantime. He does not have to be paid the minimum wage for the time spent travelling from his second appointment to his home; or from his home to his third appointment.
- 5** If the care worker in the above example travels direct to the noon appointment and takes a rest break on the way, the period when he was travelling must be treated as time worked for minimum wage calculation purposes but the rest break can be excluded.

Training time

129 A worker must be paid the minimum wage for time spent training at or away from the place of work during normal working hours.

What hours do not count for time workers?

130 The following paragraphs describe the times when the minimum wage does not have to be paid to time workers.

Travelling between home and work

131 A time worker is not entitled to be paid the minimum wage when he is travelling between home and his place of work or place of training.

Example 17: Travel time between home and work

On a normal day, a worker leaves home at 8.00am to travel to his normal place of work to begin work at 9.00am. The worker's normal working day is from 9.00am to 5.00pm with a lunch break from noon to 1.00pm. The worker does not need to be paid the minimum wage for travelling into work from home and back again.

On another day, he is required to work at a place other than his normal place of employment. He leaves home at 6.00am to begin work at 9.00am. The worker does not need to be paid the minimum wage for this additional travelling time.

Absences from work

132 For time workers, absences from work, and any pay received for those absences, are ignored when calculating minimum wage pay. Particular absences are discussed in paragraphs 133 and 134.

Rest breaks

133 The minimum wage does not need to be paid for any period when a time worker is absent from work. Recognised lunch and other rest breaks are regarded as absences from work, even if work is done during this time (but if a worker is required to work at that time, then it would not count as a rest break).

Holidays, sick leave, maternity leave

134 Periods when the time worker is on holiday, sick or on maternity leave do not count in the calculation of minimum wage pay. However, the normal rules governing statutory paid holidays, sick pay and maternity pay apply. Neither the money received for such absences from work, nor the length of the absences themselves, are counted when calculating the minimum wage pay of time workers.

Industrial action

135 Time when a worker is engaged in industrial action is treated as time that the worker is absent from work. Those hours therefore do not count towards time when the minimum wage is payable. It makes no difference whether the industrial action is a full strike, go-slow or work-to-rule; or whether the worker, under his contract, remains entitled to full or partial pay. Any pay received for those hours, as well as the hours themselves, is ignored when calculating minimum wage pay.

Sleeping between duties

- 136** If a worker arranges with his employer to sleep at the place of work, and he is provided with suitable facilities for doing so, the time when he is permitted to sleep and is not working will not be treated as time when the minimum wage is payable. But if he has to get up and do some work during the night, the time spent awake and working will count as time when the minimum wage is payable.
- 137** A number of employment tribunal cases have touched on this issue. Provided the employment contract clearly sets out the period when the worker is permitted to sleep, and the employer provides suitable sleeping facilities, the worker need not be paid the minimum wage in respect of that period if he is not actually working. He must, however, be paid the minimum wage in respect of any time during the period when he is working or awake for the purposes of working. In cases where the employment contract does not clearly specify any sleeping time, however, the tribunals seem likely to conclude that the minimum wage should be paid for the full time when the worker is at work.

Example 18: Sleeping time

A care assistant is employed at a residential care home and is required to be on the premises overnight from 10.00pm until 6.00am. He is allowed to sleep between the hours of 11.30pm and 4.30am if he is not required to care for a resident, and he is provided with a bed for this purpose. This sleeping period does not count for the minimum wage, but the minimum wage must be paid for the periods 10.00pm to 11.30pm and 4.30am to 6.00am. Thus the worker is entitled to a minimum of 3 hours' pay at the minimum wage rate each night.

If the worker is woken to attend to a resident during the normal sleeping hours, he must be paid for the period he is awake. Therefore, if he is attending to a resident during the night and is awake from 2.00am to 3.00am for this purpose, he is entitled to the minimum wage for that hour.

Summary of time-work hours that count and do not count

138 When calculating the hours of time work for which the minimum wage is payable, the employer or worker should include the following.

Box 10: Time work hours that count

The following hours of time work count:

- time spent at or near the workplace, excluding rest breaks;
- travelling time on business;
- training time;
- time spent awake for the purpose of working during sleeping time.

12 Hours for which the minimum wage must be paid: salaried-hours work

What is salaried-hours work?

139 Please ensure that you have read chapter 10 on 'different types of work' before you read this chapter.

140 Salaried-hours work is where a worker:

- is paid under his contract for a set basic number of minimum hours in a year;
- is entitled under his contract to an annual salary; and
- is paid in equal weekly or monthly instalments i.e.12 monthly or 52 weekly instalments.

141 It does not matter how many hours the worker works in the week or month, so long as the weekly or monthly instalments remain the same. Variations in the weekly or monthly instalments are ignored in some instances for example if a variation results from:

- a performance bonus payable in respect of more than one pay reference period;
- a pay increase;
- pay for working hours in excess of the basic hours e.g. overtime payments;
- the worker leaving part-way through the week or month.

Who are salaried-hours workers?

- 142** Salaried-hours work could exist in any sector or occupation. Most office workers, public-sector workers and workers with large companies are likely to be paid on the basis of an annual salary.
- 143** Salaried-hours workers include workers who work for only part of the year but are entitled to an annual salary paid in instalments during the whole year. For example, cleaning, catering or caretaking staff in schools are often paid a regular weekly or monthly amount throughout the year, although they work in term time only.

What hours of work count for salaried-hours workers?

- 144** Broadly speaking, a salaried-hours worker is counted as working at the same times as a time worker, for example when:
- he is at work and required to be at work (see paragraph 127);
 - he is on standby or on-call at or near the place of work (see paragraph 127);
 - he is kept at his place of work but cannot work because of machine breakdown (see paragraph 127);
 - he is travelling on business during normal working hours (see paragraph 128);
 - he is training or travelling to training during normal working hours (see paragraph 129).
- 145** Unlike time workers, hours of absence are counted as hours worked for a salaried-hours worker if the worker is paid his normal pay when he is absent. Absences such as rest breaks, lunch breaks, holidays, sick absence or maternity leave are counted towards time when the minimum wage is

payable if they form part of the worker's basic minimum hours under the contract. This means that the periods of absence and the amounts paid for them must be taken into account when calculating minimum wage pay.

What hours do not count for salaried-hours workers?

146 The only hours that do not count as time when a salaried-hours worker should be paid the minimum wage are described in paragraphs 147–149.

Periods paid at less than normal pay

147 When a worker is away, for example, on long-term sick absence, his salary may drop to a proportion of his normal salary or even to nothing. The period of this absence does not count as part of the basic annual hours of the contract. It must be subtracted from the total hours for which the minimum wage is payable in the pay reference period.

Example 19: Long-term sick leave

A worker is paid his full hourly pay of £5.00 an hour for the first six weeks of any sick absence. After this period the employer pays only half-pay of £2.50 an hour. The hours of absence paid at the full rate count as part of the basic hours under the contract (since the worker is treated the same as if he were at work). But once he is paid half-pay, the absence is not counted as work time for calculating the minimum wage pay of the salaried-hours worker and the payment is also ignored.

Other long-term absence

148 A company may allow a worker to take unpaid leave. This time does not count as the basic annual hours of the contract and must be subtracted from the total hours for which the minimum wage is payable in the pay reference period.

Industrial action

149 Time when a salaried-hours worker is engaged in industrial action is treated as time that the worker is absent from work. Those hours therefore do not count towards time when the minimum wage is payable. It makes no difference whether the industrial action is a full strike, go-slow or work-to-rule; or whether the worker, under his contract, remains entitled to full or partial pay. Any pay received for those hours, as well as the hours themselves, is ignored when calculating minimum wage pay in the pay reference period.

Calculating hours of salaried-hours work for which the national minimum wage is payable

150 For salaried work, the contract between the worker and employer must set out a basic number of hours for which the worker is to be paid. The hours do not have to be specified for the whole year (for example, 2,000 hours a year) but can be expressed as a weekly number of hours or a monthly number of hours instead.

151 The main thing is that it should be possible to calculate what the basic annual number of hours is.

Calculation when the worker does not work any more than the basic annual hours

152 The first step is to calculate the salaried hours worked in a pay reference period.

To do this, divide the basic minimum hours for the year by the frequency of payment as indicated in the box below.

Box 11: Calculating the salaried hours in a pay reference period

1 For a pay reference period of a week:

Divide the basic yearly hours by 52: $2080/52 = 40$ hours a week.

2 For a pay reference period of a month:

Divide the basic yearly hours by 12: $2080/12 = 173.3$ hours a month

3 For a pay reference period which is neither a week nor a month, because a worker joins or leaves during the pay reference period:

Divide 365 by the number of days in the pay reference period:

Example:

Worker starts work on 4 January and therefore is only on the employer's books for 28 days out of the 31 days in that month.

$28/365 = 7.67\%$ of a year.

7.67% of basic salaried hours = $2080 \times 7.67\% = 160$ salaried hours in 28 days.

- 153** The following examples show how to calculate whether a salaried-hours worker has received the minimum wage when he does not work any more than the basic annual hours.

Example 20: Calculation of national minimum wage pay for a salaried-hours worker who does not work any more than the basic annual hours

- 1** A worker is paid £10,680 basic pay a year. He is paid regular monthly instalments of £890. He must work 40 hours a week including breaks.

Identify annual hours: $52 \times 40 = 2,080$

Identify hours in pay reference period: $2,080 \div 12 = 173.3$ hours

The 173.3 hours in the pay reference period are taken to have been worked, even in months with a longer or shorter number of working days and hours.

To calculate whether the national minimum wage has been paid:

Divide monthly pay £890 by 173.3 hours = £5.14 an hour.

- 2 A worker is employed as a school cleaner during term-time only.

When he is working he does a 40-hour week for 35 weeks a year.

He gets paid a regular £148 a week all year round, whether he is working or not.

Identify annual hours: $40 \times 35 = 1,400$

Identify hours in pay reference period:

$1,400 \div 52 = 26.9$ hours

The 26.9 hours in the pay reference period are taken to have been worked, even when the worker has done 40 hours during term-time or no hours during the holiday.

To calculate whether the national minimum wage has been paid:

Divide weekly pay £148 by 26.9 hours = £5.50 an hour.

Box 12: Possible pattern of pay and hours for a salaried hours worker who does not work more than the basic annual hours

Assumptions: term-time worker (22 or over) with basic annual hours of 30 weeks @ 40 hours per week = 1,200 hours paid at £4.85 per hour = £485 per month.

Month	Salaried hours	Hours worked	Pay received (@ October 2004 main wage pay rate)	Hourly national minimum
January	100	120	485	4.85
February	100	160	485	4.85
March	100	160	485	4.85
April	100	Nil	485	4.85
May	100	180	485	4.85
June	100	160	485	4.85
July	100	20	485	4.85
August	100	Nil	485	4.85
September	100	80	485	4.85
October	100	160	485	4.85
November	100	100	485	4.85
December	100	60	485	4.85
Totals	1200	1200	5,820	4.85

What if hours actually worked in the year are greater than the basic hours set out in the contract?

154 Sometimes, a worker may do all his hours under his annual contract before the end of the contractual year. When this happens, the minimum wage calculation for the relevant pay reference period(s) must include those extra hours. This rule applies only where the worker's contract does not entitle him to additional pay for the extra hours. If the worker is paid for the extra hours (for example, because they are treated as overtime), he is treated as if he were doing time work for those hours and there is no need to do a special calculation.

Example 21: Salaried-hours worker paid for extra hours outside the contract

A worker has an annual contract for 2,040 hours (12 months x 170 hours), running from January to December. He normally works no more than 170 hours a month. But in October he has to put in 20 extra hours. Anticipating that this will take him above his contract hours by the end of December, his employer pays him in November for the 20 extra hours – in addition to his normal monthly pay. There is no need to make any further calculation.

Calculating the excess hours worked by a salaried hours worker

- 155** Once a salaried-hours worker has worked for more than the basic annual hours, he must be paid the minimum wage for the excess hours. The payments must be made both for the pay reference period when the worker first goes into the extra hours; and for any remaining pay reference periods in the year.
- 156** The first thing to do is to work out whether the worker has done more than the basic hours. If the contract is to work 2,040 hours a year and stays at that throughout the year, the basic hours are 2,040. Once those 2,040 hours have been worked, the extra unpaid hours must be paid for at no less than the minimum wage.
- 157** To calculate whether the worker has done more than the basic hours, add together:
- the basic hours which the worker has worked;
 - the hours within basic hours for which the worker has been absent;
 - the unpaid extra hours which the worker has worked.
- 158** Hours when the worker was engaged in industrial action must be excluded.
- 159** The following table shows the pattern of pay and hours when a worker does more than the basic annual hours in his contract.

Box 13: Possible pattern of pay and hours for a salaried hours worker who works more than the basic annual hours specified in his contract

Assumptions: worker has a contract specifying 2,040 basic hours per year (12 x 170 hours per month) and is paid £9,894 per annum (£824.5 per month).

Month	1 Basic hours	2 Actual hours worked: (extra)	3 Actual hours worked (cumu- lative)	4 Pay received	5 National minimum wage pay per hour
April	170	190 (20)	190	824.5	4.85
May	170	180 (10)	370	824.5	4.85
June	170	200 (30)	570	824.5	4.85
July	170	190 (20)	760	824.5	4.85
August	170	200 (30)	960	824.5	4.85
September	170	190 (20)	1,150	824.5	4.85
October	170	200 (30)	1,350	824.5	4.85
November	170	190 (20)	1,540	824.5	4.85
December	170	190 (20)	1,730	824.5	4.85
January	170	200 (30)	1,930	824.5	4.85
February	170	180 (10)	2,110*	824.5	See box 14
March	170	180 (10)	2,290*	824.5	See box 15
Total	2,040	2290 (250)	2,290*	---	

160 In this example (Box 13), the worker exceeded his annual contracted hours part-way through the February pay reference period. The worker remains entitled to receive for February and March the £824.5 per month which was the basis of the original contract, but in addition he needs to be paid at least the minimum wage rate for the additional hours worked over and above the contracted hours. Box 14 sets out the relevant calculations.

Box 14: Calculating hours that count in the pay reference period when the basic hours are exceeded

- 1 Identify the day when the basic hours are exceeded (assume 15 February in a non-leap year i.e. 28 days total).
- 2 For the 14 days before the basic hours were exceeded calculate the hours as follows:
 - calculate 14 days as a percentage of the 365 days in a full year
 - $14 \times 100 / 365 = 3.84\%$
 - apply this percentage to the basic contracted hours (2040)
 - $3.84\% \text{ of } 2040 = 78.34 \text{ hours}$

NB: Any hours taken as unpaid leave should be deducted at this stage.
- 3 For the 14 days after the basic hours were exceeded calculate the hours in the same way which again gives 78.34 hours
- 4 Identify the actual hours worked from 14 to 28 February which may be, say, 10 days \times 7 hrs = 70 hours.

NB: Deductions for unpaid leave cannot be made in this part of the calculation.
- 5 Add together these three sets of hours $78.34 + 78.34 + 70 = 226.68 \text{ hours}$
- 6 This is the total number of hours for which the worker must be paid for February. Therefore February pay must = $226.68 \times \text{£}4.85 = \text{£}1,099.40$

- 161** For all subsequent pay reference periods once the annual contract hours have been exceeded (March, in the above case), the worker remains entitled to receive the £824.50 per month which was the basis of the original contract, but in addition needs to be paid at least the minimum wage rate for the additional hours worked over and above the contracted hours. Box 15 demonstrates this.

Box 15: Calculating hours that count in the pay reference period following the one in which the basic hours were exceeded

1	Add the money already owed for the period as per the contract	£824.50
	to the money owed for the hours worked in the period $£4.85 \times 180 =$	£873
2	Making a total of	£1,697.50

Fixing the starting point for calculating the year, for salaried-hours workers who work more than the basic hours

- 162** To estimate whether extra hours have been worked, over and above the basic hours in a contract year, it is necessary to fix the starting point for the calculation.
- 163** The calculations depend on whether the worker is paid monthly or weekly. Box 16 sets out the details.

Box 16: Starting-point for calculating the contract year when a salaried-hours worker does more than the basic hours

Monthly paid workers

- **if they start on the first day of a month, say 1 May**

Their contract year will be 1 May to 30 April in the following year while continuing in the same job.

- **if they start part way through a month, say 15 May**

Their contract year will be 15 May – 31 May of the following year and then starting on 1 June and ending on 31 May each subsequent year while continuing in the same job.

Weekly paid workers

- **if they start on, say, 22 May**

Their contract year will be 22 May in year 1 until 21 May the following year and then starting on 22 May each subsequent year while continuing in the same job.

Identifying the basic hours when a contract is changed

164 Boxes 12 and 13 assume that the hours in the annual contract stay fixed. But if the contract hours are reduced or increased at some point in the year, this will have an effect on whether and when the worker does more hours than the basic hours. There are two ways of identifying the basic hours of a contract that is changed.

- 165** The first method applies when, for example, the worker or employer wants to identify what the basic hours are, before the contract is changed. In this case, the basic hours are the same as the hours that were fixed before the change takes place.

Example 22: Identifying basic hours before a contract is changed

An annual contract of 2,040 runs from April to March. The contract hours are reduced to 1,900 hours from 1 November.

If the basic hours are calculated at any time before November, the number is 2,040.

- 166** The second method applies, for example, when the worker or employer wants to identify what the basic hours are, after the contract is changed. In this case the calculation is as follows:

Example 23: Identifying basic hours after a contract is changed

An annual contract of 2,040 hours runs from April to March. The contract hours are then reduced to 1,900 from 1 November. If the basic hours are to be identified at any time from 1 November onwards, it is necessary to get the right proportion of annual hours in the right part of the year. To do this:

Calculate the number of days to the end of the contract year: 151

Divide that number by 365 and multiply by the new contract hours (1,900)

Thus $151 \div 365 \times 1,900 = 786$ hours (a)

Calculate how many days there were from the start of the contract year to the day before the contract was changed: $365 - 151 = 214$

Divide this number by 365 and multiply by the previous contract hours (2,040)

Thus $214 \div 365 \times 2,040 = 1,196$ hours (b)

The basic hours at this point are: $786 + 1,196 = 1,982$ hours.

- 167** If the contract hours are changed more than once during the year, a similar method is used to get the right proportion of hours in the right part of the year, as shown below.

Example 24: Identifying basic hours after a contract is changed twice

An annual contract of 2,040 hours runs from April to March. The contract hours are reduced to 1,900 hours from 1 November and to 1,800 hours from 1 February. If the basic hours are identified at any time on or after 1 February it is necessary to get the right proportion of annual hours in the right part of the year.

1 Work out how many days there are to the end of the contract year from the last time the contract was changed: 59

2 Divide them by 365 and multiply by the new contract hours (1,800):

$$59 \div 365 \times 1,800 = 290 \text{ hours (a)}$$

3 Work out how many days there were from the first time the contract was changed to the second (and last) time it was changed: 92

4 Divide them by 365 and multiply by the contract hours for that period (1,900):

$$92 \div 365 \times 1,900 = 479 \text{ hours (b)}$$

5 Work out how many days there were from the start of the contract year to the day before the contract was first changed:

$$365 - 59 - 92 = 214$$

6 Divide them by 365 and multiply by the previous contract hours (2,040):

$$214 \div 365 \times 2,040 = 1,196 \text{ hours}$$

7 The basic hours at this point are:

$$290 + 479 + 1,196 = \mathbf{1965} \text{ hours}$$

168 When the hours in salaried-hours contracts are changed, the above calculations provide the new starting-point to calculate whether, and if so when, the worker has done more than the basic hours.

What if a salaried-hours worker leaves before the end of the year?

169 If a salaried-hours worker leaves before the end of the year, he may be found to have worked more hours than the basic minimum hours for the part of the year he has been employed. For example, a worker who is on an annual contract of 2,040 and who leaves after six months having done 1,200 hours actual work, will have worked 180 additional hours (e.g. $2,040 \div 2 = 1,020$ are the hours he should have worked but he has worked 1,200 which is $1,020 + 180$).

170 To calculate whether excess hours have been worked (for minimum wage purposes) when a worker leaves, see Box 17.

Box 17: Calculating excess hours when a worker leaves

- 1** Take actual hours worked since the beginning of the contract year (which, taking the example of the worker in Box 13, would be 1,150 hours).
- 2** Take the basic contract hours since the beginning of the contract year (which, staying with the example of the worker in Box 13, would be $170 \times 6 = 1,020$).
- 3** Worker's excess hours therefore = $1,150 - 1,020 = 130$ hours.
- 4** The hours for which the minimum wage is payable in the worker's final pay packet is therefore $170 + 130 = 300$ hours.
- 5** The worker's final pay packet should therefore be $\text{£}4.85 \times 300 = \text{£}1,455$

171 The same principle applies if a worker leaves during the year, when he has already worked more than the basic hours in the contract. The excess hours must be paid for; and the worker's annual basic hours continue to count, even during the part of the year when he is no longer working. This is because he has, in fact, already worked those hours by the time he leaves, but has not been paid for them. For example, if the worker in Box 13 left at the end of February, he would have to be paid the extra hours worked up until then.

Some general points to bear in mind

- 172** On a more general level, employers and salaried-hours workers may find it helpful to keep in mind the following principles:
- in order to count as salaried hours work the contract must allow the basic hours to be worked out over the year. It must be clear what the weekly or monthly contractual hours are, if the annual hours are not specified;
 - calculate the basic hours for each pay reference period, based on how frequently the worker is paid. Ensure the worker is paid the minimum wage for these hours in each pay reference period;
 - for salaried-hours workers whose annual pay is close to the minimum wage or whose actual hours may significantly exceed their basic hours, keep a check on hours worked in a year, to see if the workers are doing more hours than were specified;
 - for workers whose pay is well above the threshold, checking of hours should be less necessary: for example, a worker on 2,040 basic hours a year and receiving pay of £15,000 a year could, in theory, do more than 1,000 extra hours in the year and still be receiving at least the minimum wage every month;
 - decide whether to pay for excess hours as they are worked in each pay reference period; or to calculate and pay for them later;
 - subtract absences – but only if the absence is not paid for at the normal rate for hours worked or is the result of industrial action.

13 Hours for which the national minimum wage must be paid: output work

What is output work?

- 173** Please ensure that you have read chapter 10 on 'different types of work' before you read this chapter.
- 174** Output work is work that is paid for according to the number of things that a worker makes or tasks he performs. It is commonly known as 'piece work'.

Example 25: Output work

A farmer employs a worker to harvest fruit on a piece work basis at a rate of £1.50 for each tray of fruit picked. The employer does not set any hours of work and the worker is free to start and finish work whenever he wishes. This is output work.

- 175** However, if the worker is doing piece work and the hours of work are fixed by the employer, this counts as 'time work' even if the worker is also paid according to how much he produces. Chapter 11 sets out the way of calculating hours of time work.

Who are output workers?

176 Typical output workers are piece workers working at home and some agricultural workers (usually casual workers).

“Fair” Piece Rates

177 On **1 October 2004** the previous system of “fair estimate” agreements for output workers was replaced by the “rated output work” system providing for “fair” piece rates.

178 Employers are now required either to pay their workers the minimum wage for every hour they work or at least a “fair” piece rate for each piece produced or task performed, determined by reference to the rate of performance of (in effect, the time taken by) an average worker of the same employer doing the same job. From **6 April 2005** the “fair” piece rate for a piece produced or task performed must be determined by reference to 120% of the time taken by the average worker. This will mean that employers will have to multiply the fair piece rate up by a factor of 1.2.

179 The conditions that must be satisfied for the rated output work system to apply are as follows:

- the worker’s contract does not set any normal, minimum or maximum working hours in relation to the piece to be produced or task to be performed;
- the employer does not control the hours that a worker works e.g. does not dictate his starting or finishing time, or the length of time spent producing the items or performing the tasks;
- the employer has determined the “mean hourly output rate” in relation to the type of piece or type of task in question;

Hours for which the national minimum wage must be paid: output work

- the worker must have been given a written notice containing specified information before the start of the relevant pay reference period.

Calculating the output rate

180 The “mean hourly output rate” for a particular piece or task is the average number of pieces or tasks (including fractions) that workers of the employer doing that work produce/perform per hour. To calculate the “mean hourly output” rate, an employer can:

- carry out a test of all his workers making the particular piece or performing the particular task. To calculate the “mean hourly output rate”, he then simply divides the total number of (as appropriate) such pieces produced per hour or such tasks performed per hour by the total number of workers tested; or
- the employer can test a sample of his workers. In this case the sample must be representative in terms of the speed at which they work. It is important that any sample of workers is representative. It would not be fair for an employer to choose a sample of his fastest workers or indeed a mixture of average to fast workers.

In both cases, the test is only satisfactory if it is conducted in circumstances similar to those in which the workers actually work.

It is important that employers take these requirements seriously. If the matter were to end up in the Courts the onus would then be on the employer, under the provisions of the National Minimum Wage Act 1998, to prove that he has complied with his obligations to pay the national minimum wage.

Alternatively, the employer can, in two cases, estimate the average number of pieces produced or tasks performed. The employer may:

- make an estimate where he has already tested to determine the “mean hourly output rate” for another piece that is reasonably similar to the one in question. The employer may then make a fair adjustment to the “mean hourly output rate” for such other piece or task to take account of the increased or decreased time needed to produce the item or perform the task in question and then use such adjusted rate for that item or task; or
- where a test has already been carried out – and the “mean hourly output rate” established – in relation to the same piece/task made/performed but in different working circumstances. The employer, in such a case, makes a fair adjustment to the rate that has already been determined through testing. For example, an employer may want to take and adjust the rate that has been arrived at through testing factory workers and use such rate in relation to homeworkers producing the same piece.

What to include in the written notice

181 First, the notice must be issued before the start of the pay reference period. But if the terms of the notice have not changed, there is no need for a new notice before every pay reference period. The notice must:

- explain, that for the purposes of compliance with the national minimum wage laws, the worker will be treated as working for a certain period of time by his worker;
- state that, for the purposes of determining such period of time, the employer has conducted a test or made an

Hours for which the national minimum wage must be paid: output work

estimate of the average speed at which the piece/task in question is produced/performed;

- state what the “mean hourly output rate” for the piece or task is;
- state the rate or sum to be paid to the worker for the production of the piece or performance of the task in question; and
- give the telephone number of the national minimum wage helpline (0845 6000 678).

It is important to note that if a worker is not provided with a written notice that complies with the conditions outlined above, the worker has to be paid for each hour they work. All homeworkers may therefore wish to record the number of hours they work, if they do not already do so.

Further guidance on the new system of fair piece rates can be found at www.dti.gov.uk/er/nmw.

Example 26: Calculating the ‘fair’ piece rate from October 2004

If the output worker of an employer working at the mean speed produces 10 items of a certain type of piece in an hour (the mean hourly output rate), the “fair” piece rate for that item will be 48.5 pence.
10 times 48.5 pence = £4.85.

Example 27: Calculating the 'fair piece rate' from 6 April 2005

From 6 April 2005, using the example above, if the output worker of an employer working at the mean speed produces 10 items of a certain type of piece in an hour, the "fair" piece rate for that item will be 58.2 pence (120% of what was the "fair" piece rate of 48.5 pence prior to 6 April 2005).

Travel time for output workers

182 An output worker must be paid at least the minimum wage for time spent travelling in connection with the job: for example, the time spent by a commission salesman travelling from one appointment to the next. It does not include time spent travelling between home and the premises from which he works, but it will include time that an output worker who makes things at home spends travelling from home to the premises to which he reports.

Paying the minimum wage for every hour worked

183 Unless a rated output work system is in place the employer must pay the worker, on average, the minimum wage for every hour during the pay reference period, regardless of the number of items produced. The general record-keeping requirements apply (chapter 17), as does the reversal of the burden of proof, so an employer with or without a rated output work system agreement in place will still need to keep accurate information about the hours worked by his workers in order to carry out the calculations detailed above.

14 Hours for which the minimum wage must be paid: unmeasured work

What is unmeasured work?

184 Please ensure that you have read chapter 10 on 'different types of work' before you read this chapter.

185 Work is unmeasured work if it is not time work, salaried hours work or output work. It includes, in particular, work where there are certain tasks to be done but no specified hours or times when they must be done. The employer requires the worker to work when needed or when work is available.

186 Employers need to ensure that the work is not time work, salaried-hours work, or output work. If the work fits any of those categories, then it is not unmeasured work.

Who does unmeasured work?

187 Workers who do unmeasured work could be people without set hours or an annual salary and whose job is to look after a hostel or an inn. They could be domestic staff without set hours or an annual salary.

Calculating hours of unmeasured work

188 The employer must pay the minimum wage to people who do 'unmeasured' work. Because the minimum wage is an hourly rate, this is not always straightforward.

189 There are two options for identifying the hours of unmeasured work to be done:

- recording every hour worked; or
- coming to a 'daily average' agreement of hours to be worked.

'Daily average' agreement of hours to be worked

190 This is a written agreement with the worker which must be agreed before the start of the pay reference period that it covers. The 'daily average' agreement must:

- set out the average number of hours that the worker is likely to spend each day in doing the tasks assigned to him. This daily average number of hours must be a realistic average. If challenged, it is for the employer to prove that the number of hours is indeed realistic.

191 Details of the 'daily average' agreement are set out below.

Box 18: The 'daily average' agreement

The agreement must:

- be agreed between the worker and the employer;
- be made before the start of the pay reference period that it covers;
- be in writing;
- set out the daily average number of hours which the worker is to work;
- ensure the daily average number of hours is realistic.

Note: one agreement can cover a number of pay reference periods if there is no change in the average number of hours.

Calculating the hours of unmeasured work under a 'daily average' agreement

192 To calculate the number of hours of unmeasured work done in the pay reference period (say, one week) when there is a 'daily average' agreement:

- confirm the agreed daily average number of hours per day (say 5 hours a day) and the number of hours the worker is required to be available for work on a full working day (say 12 hours);
- multiply the agreed daily average number by the number of days when the worker was in fact available for work for the full number of hours contemplated by the contract (say 4 days): 5 hours x 4 days = 20 hours;
- if a worker is available for only part of a day, work out what fraction that is of the time he is normally required to be available and calculate his hours of work proportionately. So, in the example above where the worker is estimated to average 5 hours work in 12, if he was only available for 6 hours in a day it would count as 2.5 hours work.

Travel time for people doing unmeasured work

193 Someone doing unmeasured work must be paid at least the minimum wage for time spent travelling in connection with the job. The rules on travel time generally are explained in paragraph 131. Such time must therefore be included in the 'daily average' hours to be worked.

Paying the minimum wage for every hour worked

194 Unless a 'daily average' agreement is reached between the employer and the worker, the employer must pay the worker, on average, the minimum wage for every hour worked during the pay reference period. The general record-keeping requirements apply (chapter 17), as does the reversal of the burden of proof, so an employer with no 'daily average' agreement will still need to keep accurate information about the hours worked by his workers.

Some general points to bear in mind

195 An employer of people doing unmeasured work should, if there is a 'daily average' agreement, ensure this:

- is in place before work begins at the start of each pay reference period;
- states the 'daily average' of hours to be worked;
- is realistic.

196 If a 'daily average' agreement is not in place then the minimum wage should be paid for each hour worked.

15 Agricultural workers and the minimum wage

All agricultural workers must be paid at least the minimum wage

197 Agricultural workers must receive no less than the national minimum wage. At the same time, the agricultural minimum wage arrangements operate. Under the agricultural minimum wage, some agricultural workers will be entitled to higher rates of pay than the minimum wage.

198 People with a disability who have an agricultural permit of exemption issued by an Agricultural Wages Committee must also receive at least the national minimum wage. Where a permit specifies a minimum rate that is above the national minimum wage, the higher rate will continue to apply.

Calculating whether an agricultural worker has received the national minimum wage

199 In most cases, paying the agricultural minimum wage will also ensure that the national minimum wage has been paid. It is for employers to ensure that payment of the agricultural minimum wage also results in payment of at least the national minimum wage to individual workers.

200 Details of the minimum basic and overtime rates and of other terms and conditions that apply to agricultural workers are shown in the Agricultural Wages Orders made by the Agricultural Wages Boards. These details, as well as information on the application of the national minimum wage in agriculture, can be obtained from:

Detailed Guide to National Minimum Wage

In England and Wales:

The Agricultural Wages Helpline – Telephone 0845 0000 134
(local call rates apply)

In Scotland:

The Agricultural Wages Helpline – Telephone Edinburgh
0131 244 6397

In Northern Ireland:

The Agricultural Wages Helpline – Telephone Belfast 028905
20813

16 Calculating the hourly rate of pay

Summary of calculation method

201 The following is a general summary of how to calculate the hourly rate of a worker's pay to compare it with the rate of the minimum wage. The individual chapters should be read for further detail. To calculate whether the minimum wage has been paid, an employer or worker needs to:

A. Calculate minimum wage pay

- check that the person is a worker who must be paid at least the minimum wage (Chapters 2 and 3);
- identify the worker's pay reference period by checking what period he is being paid for (Chapter 6);
- check the worker's gross pay and identify what counts towards minimum wage pay (Chapter 7);
- subtract from gross pay anything that does not count towards national minimum wage pay (Chapter 8);
- add back an amount for accommodation, up to the permitted limit, if the accommodation is provided free of charge (Chapter 9);
- the result should be the amount of minimum wage pay which the worker has received in the pay reference period.

B. Calculate the hours for which the minimum wage must be paid

- check what kind of work the worker has done in the pay reference period:
 - time work (Chapter 11);
 - salaried-hours work (Chapter 12);
 - output work (Chapter 13);
 - unmeasured work (Chapter 14).
- identify and calculate in each case the hours that count. The calculation is different for each type of work as explained in Chapters 10–14;
- the result should be the number of hours for which the minimum wage must be paid in the pay reference period.

C. Obtain the worker's hourly rate of pay for comparison with the minimum wage

- divide the amount of minimum wage pay from A, by the number of hours from B;
- the result is the worker's hourly rate of pay that should be compared with the minimum wage.

D. Compare the worker's hourly rate with the appropriate rate of the minimum wage

Check against:

- the rate for people aged 22 and above;
- the rate for people aged 18-21;
- the rate in the first six months of employment for those who do accredited training and are aged 22 and above. In this case, check also whether there is a training agreement (Chapter 5);
- the rate for people aged below 18 but above compulsory school leaving age.

17 Record-keeping requirements

Who needs to keep records?

202 All employers must keep sufficient records to establish that they are paying their workers at least the minimum wage. Employers who have a 'training agreement' (paragraph 54), or 'daily average' agreement (paragraph 190) with a worker must also keep a copy of the agreement. Employers of output workers using the rated output work system must keep a copy of the written notices served on his workers (paragraph 181) and a copy of the data showing how they have arrived at the "mean hourly output rate" for all relevant pieces/tasks.

Why must records be kept?

203 The records need to be kept because they will help any worker, employer, enforcement officer, tribunal or court determine whether the minimum wage has been paid. If there is a dispute, the burden is on the employer to prove that he has paid the minimum wage to a worker.

204 If a worker has reasonable grounds to believe that he has not been paid the minimum wage, he has the right to see the employer's records which relate to him. To do so, he must make a written request to the employer and the employer must produce the records within 14 days.

205 An enforcement officer may also visit a company and ask to inspect the employer's minimum wage records or require them to be produced on reasonable notice.

206 It is a criminal offence if an employer fails to keep records, keeps false records or produces false records. It is also a criminal offence to refuse or prevent an officer from seeing these records.

What records count as ‘sufficient’ records?

207 The regulations do not state what count as ‘sufficient’ records. This is in order to provide flexibility. The situation will vary from employer to employer and from worker to worker. It is left to the employer’s judgement in each case. However, employers should be aware that if a worker brings a claim for unpaid minimum wage to a tribunal or court, the burden will be on the employer to prove that the minimum wage has been paid. The employer is likely to need records to enable him to provide this proof. The following paragraphs provide some general advice which should help employers decide what type of minimum wage records they should keep. If an employer is unsure if he is keeping sufficient records he may wish to seek independent legal advice.

208 For a worker who is paid well above the minimum wage, his employer’s existing pay and time records may be sufficient to show that the worker is in fact receiving the minimum wage.

209 It is for the employer to judge when, for any particular worker, he should keep more detailed records specific to payment of the minimum wage. The closer to the minimum a worker’s gross pay is, and the longer the worker works in a pay reference period, the greater the risk that the worker could be paid below the minimum wage. The following comparative figures give an idea of how the hourly minimum wage may convert into a daily, weekly, monthly or annual rate. They are intended only as a rough illustrative guide, because they do not exclude various pay elements such as

allowances or benefits that do not count towards minimum wage pay; neither do they take account of extra hours:

- national minimum wage standard hourly rate: £4.85;
- daily amount if 8 hours a day: £38.8;
- weekly amount if 40 hours/week: £194.00;
- monthly amount (22 working days at 8 hours): £853.6;
- annual amount if 40 hours/week: £10,126.8 (52.2 weeks/year).

210 If an employer wants to keep more detailed records, the extra information indicated in Box 24 could be kept about payments made to the worker and hours worked in a pay reference period:

Box 19: Examples of records that may count as 'sufficient'

- gross pay paid to the worker, and the hours worked by the worker;
- overtime/shift premia;
- amount of unconsolidated allowances;
- any deduction or payment for accommodation;
- the amount representing tips paid to the worker through the payroll;
- any 'daily average' of hours to be worked, calculated as indicated in Chapters 10-13;
- any absences, for example, rest breaks, sick leave, holiday;
- any travel or training during work hours and its length;
- bank statements or other commercial documentation.

211 The above is not intended to be a definitive or comprehensive list. The details of records to be kept may differ from case to case and also according to the type of work being done.

Do the records need to be in any particular form?

212 The records do not have to be kept in any particular form. They can be kept on paper or on computer, for example. But the employer must be able to produce the records for an individual pay reference period for an individual worker in a single document on request.

How long do minimum wage records need to be kept?

213 The employer must keep records for a minimum of three years after the pay reference period following the pay period that the records cover. For example, if a person is paid each calendar month, his records for the month of May 2002 would have to be kept until the end of June 2005.

214 Although the rules do not require employers to keep records for any longer than three years, employers should be aware that a civil case can be brought before a court for up to six years (five years in Scotland) after an alleged failure to pay the minimum wage. In such a case, it would still be for the employer to prove that he had paid the minimum wage.

18 Enforcement

Main means of enforcement

215 The main means of enforcement are summarised in the table at the end of this Chapter. They are:

- access to minimum wage records;
- the enforcement agency: Inland Revenue (and agricultural inspectors);
- claims by workers before tribunals and courts;
- other linked mechanisms.

Access to national minimum wage records

216 If a worker believes he is entitled to the minimum wage and is not getting paid the right amount, he can require the employer to show him his national minimum wage records (see Chapter 17). He must ask the employer in writing and can inspect and copy the records. The employer must produce the records within 14 days of the request (or within a time agreed between the employer and the worker). If a worker wants to inspect the records, he can be accompanied by another person of his own choosing.

217 If the employer refuses to let the worker see the records, or fails to produce the records, the worker can take a complaint to an employment tribunal. If the tribunal upholds the complaint the employer will be required to pay the worker an amount equal to 80 times the level of the minimum wage.

218 Officers of the Inland Revenue may ask to see an employer's records to check whether they are paying the minimum wage. An employer who fails to keep records, or who keeps or produces false records, may be subject to criminal prosecution. He will also be vulnerable in any dispute over actual pay and hours, since the burden of proving the minimum wage has been paid rests on him.

The Inland Revenue minimum wage compliance officers

219 The enforcement agency for the national minimum wage is the Inland Revenue. Agricultural wages inspectors will enforce the national minimum wage in the agricultural sector as well as enforcing the agricultural minimum wage.

220 Compliance officers working for the agency must show an identity document on request. They have various powers to obtain information. They can, for example:

- require the employer or people working for him to produce and explain records about minimum wage pay;
- require the employer or people working for him to supply further explanations as necessary to determine whether the legislation or an enforcement notice has been complied with;
- enter, at any reasonable time, the employer's premises in order to interview him;
- require an employer to attend for interview at a place of the officer's choosing.

221 If an enforcement officer believes that an employer has failed to pay at least the minimum wage to a worker:

- the officer may serve an enforcement notice which requires the employer to start paying the minimum wage and to make good previous underpayments for

each named worker. The employer may appeal against the enforcement notice;

- if the employer ignores the enforcement notice, the officer may serve a penalty notice. The penalty notice imposes a financial penalty on the employer of twice the current minimum hourly rate (e.g. current rate £4.85 from 1 October 2004, penalty = £9.70) for each day from the time the enforcement notice was issued, and for each worker named in the enforcement notice who has not been paid the money due. The penalty notice does not recalculate the amount owed to the worker but penalises the employer for non-compliance with the notice. The original enforcement notice remains in force pending the outcome of any appeal by the employer. The employer may appeal against the penalty notice.

222 If the above steps do not result in the employer complying with the enforcement notice, the enforcement officer can:

- take a case to a tribunal or county (sheriff) court on behalf of the worker;
- prosecute the employer. Deliberate refusal to pay the minimum wage is a criminal offence (see also paragraph 229).

223 Enforcement officers may carry out inspections of employers at any time. There is no requirement to provide reasons for an inspection. Officers will specifically act in response to complaints that an employer is not paying the minimum wage whether the complaint is by workers or others. Officers will also investigate where there may be a risk of non-payment.

Claims by workers before tribunals and courts

- 224** A worker can bring a claim before an employment tribunal to recover any money which he believes he is owed as a result of not receiving the minimum wage. Alternatively, a worker can go to a civil court to recover the money due to him.
- 225** A worker may also bring a claim to an employment tribunal for unfair dismissal or victimisation if his employer sacks him or takes some other action against him for trying to ensure that he gets paid the minimum wage, or simply because the worker is (or is going to become) eligible for the minimum wage. Information concerning this on this and other employment rights and work-related matters is available by contacting Acas on 08457 474747.

Example 28: Unfair dismissal because of the minimum wage

The national minimum wage helpline treats all complaints about underpayment in confidence and compliance officers do not disclose to the employer the identity of the individual who complained (or even that an individual has complained). However, if, for whatever reason, the identity of the worker were to become known to the employer who then sacked him, this would be unfair dismissal if it could be shown that the reason for the dismissal was the fact that he had complained.

A 17 year old worker is about to become 18, or a 21 year old worker is about to become 22. It would be against the law to dismiss such a worker simply because they were about to become entitled to a higher rate of the minimum wage.

- 226** In civil cases, the burden is on the employer to prove that he has paid the minimum wage to the worker, rather than for the worker to prove that he has not received the minimum wage.
- 227** Where a case is taken to an employment tribunal by a worker, a conciliation officer employed by the Advisory, Conciliation and Arbitration Service (Acas) has a duty to seek to encourage a settlement.

Criminal offences

- 228** There are six criminal offences relating to the minimum wage, with fines up to a maximum of £5,000 for each offence. They are shown in the table at the end of this Chapter.

Table: National minimum wage enforcement

Record-keeping

Requirement on employers to keep minimum wage records

Workers have a right of access to records

Tribunal can award worker 80 x minimum wage if access denied

Enforcement agency

Enforcement agency is Inland Revenue

Enforcement officers have certain powers to obtain information

Enforcement officers can exchange certain information with agricultural wages inspectors

Enforcement action

By individuals

Workers have a right to recover unpaid minimum wage through employment tribunal or other civil court

By enforcement officers

Enforcement officers have power to issue enforcement notices to require employers to pay minimum wage. If the enforcement notice is ignored, an officer has the power:

- to bring a case before a tribunal or court on behalf of the worker(s); and/or
- to impose a penalty on the employer of twice the current rate of the minimum wage (e.g. rate £4.85 x 2 = £9.70 per day), per worker, in respect of whom the employer is in breach.

Criminal offences and prosecution

229 Six criminal offences

- refusal or wilful neglect to pay minimum wage;
- failing to keep minimum wage records;
- keeping false records;
- producing false records or information;
- intentionally obstructing an enforcement officer;
- refusing or neglecting to give information to an enforcement officer.

Fine for each offence: up to £5,000 (level five) – (as at April 2004).

Other enforcement mechanisms

230 In civil cases the burden is on the employer to show that he has paid the minimum wage. Acas conciliation officers have a conciliation role in cases involving tribunals. The Secretary of State must publish information about the minimum wage when the Regulations change.

19 Frequently asked questions

Q: When did the minimum wage come into force?

A: 1 April 1999.

Q: Who is covered?

A: Most workers who are aged 18 or over and are working under a contract of employment or other form of worker's contract. There are a few exceptions set out in the legislation. From **1 October 2004** most workers aged below 18 and above compulsory school leaving age are also covered.

Q: Does it cover the self-employed?

A: No, the genuinely self-employed are not "workers" under the definition. A self-employed person's pay will continue to depend upon agreeing a price for his work with the customer or client. However, there are some cases when it is not clear whether an individual is really self-employed or whether he is working for someone else. In such cases, the 'worker' and the 'employer' may wish to consult a legal expert.

Q: What about company directors?

A: A company director will not have to be paid the minimum wage unless he has a workers' contract. Because directors are 'office holders' in common law they are not likely to have worker's contracts. This is true no matter what kind of activities they carry out and however they are paid. If a company director is not sure whether he has a workers' contract, he may wish to consult a legal adviser.

Q: Are there any exemptions for part-time workers?

A: No. All part-time workers must receive at least the minimum wage.

Q: Are casual workers, freelance workers, temporary workers and agency workers covered by the minimum wage?

A: Yes. All must receive the national minimum wage unless they are independently self employed.

Q: Are retired people and pensioners eligible for the minimum wage?

A: Yes. If they are workers.

Q: Are there any exemptions for small businesses?

A: There are no exemptions according to size of firm or business.

Q: Who is excluded from the minimum wage?

A: The only workers who are excluded are members of the armed forces, share fishermen, voluntary workers, family members working in family businesses, individuals living and working as part of a family, students attending higher education courses requiring attendance for a period of work experience, certain members of religious communities and prisoners. There are also special rules for certain sorts of Government trainees.

Q: Must volunteers be paid the minimum wage?

A: Volunteers (who provide their time and effort completely freely) need not be paid the minimum wage because they are not classed as workers. But some people who consider themselves 'volunteers' could still potentially count as 'workers' because they receive some sort of payment or benefit in kind. These 'voluntary workers' need not be paid the minimum wage provided they work for a charity,

voluntary organisation, school, hospital or similar body and they only receive reasonable expenses, relevant training or subsistence. Voluntary workers who are placed by a charity or similar body with another charity or similar body, may also receive money for subsistence without becoming entitled to the minimum wage.

Some organisations may decide to award genuine 'honoraria' to their volunteers – a gift of a reasonable amount and with no obligation. This is not likely to give those individuals the right to the minimum wage. However, regular payments are likely to indicate that an individual is a worker who has a right to the minimum wage.

Q: My organisation employs 'volunteers' who receive various payments and benefits for the work they do. Do I have to pay them the minimum wage?

A: The rules for voluntary workers are explained in paragraph 43. Many complicated arrangements exist in the voluntary sector and it is not always clear what the employment status of certain workers/volunteers will be. In the most difficult cases it may not be possible to give a clear answer without more case law from courts and employment appeal tribunals. Organisations which represent the voluntary sector (such as The National Council for Voluntary Organisations and the National Centre for Volunteering) have produced guidance in this area. Organisations may also wish to take their own legal advice.

Q: What about trainees and apprentices?

A: Many Government-funded trainees will not count as workers, and so will not be covered. But those with employment contracts are entitled to the minimum wage. There is a special rate for people receiving accredited training in the first six months of their job. Apprentices under the age of 19 are not entitled to the minimum wage. Apprentices aged 19 to 25 who are in the first 12 months of

their apprenticeship are similarly not entitled to the minimum wage.

Q: Are there any regional differences?

A: There are no differences by region. The rates apply to all workers across the UK.

Q: Can I call to report an employer paying less than the minimum wage?

A: Yes. The helpline on 0845 6000 678 takes complaints from workers, employers and third parties. All complaints will be treated as confidential so far as is possible – it is sometimes necessary to reveal that a complaint has been made when presenting complaints to a tribunal. Anonymous complaints will also be processed.

Q: Can I agree with my employer to be paid less than the minimum wage if that means they can afford to keep me on?

A: No. Such an agreement is void. It will be ineffective and any payment below the national minimum wage is illegal.

Q: How is it enforced?

A: The Inland Revenue enforce the minimum wage, apart from in the agricultural sector where it is enforced by agricultural wages inspectors. The minimum wage helplines take complaints on 0845 6000 678. Complaints are passed to Inland Revenue compliance officers located around the country, who will follow them up with visits as appropriate. If you want to know more about enforcement, you should ask the helpline.

A penalty notice, which is a civil fine, is worked out on the basis of twice the current minimum wage hourly rate for each day an employer does not comply with an enforcement notice for each worker. But officers will give employers a reasonable chance to comply before considering any penalty.

The National Minimum Wage Act 1998 makes it a criminal offence to refuse or wilfully neglect to pay the minimum wage; to fail to keep minimum wage records or to keep false records; and to obstruct an enforcement officer. The maximum penalty for committing a criminal offence under the National Minimum Wage Act 1998 is £5,000 (as at April 2004)

If you have checked the other pages under the minimum wage including the Guide to the Regulations and have not found the answer to your question, please ring the minimum wage helpline (local call rates apply).

Q: How can I find out more about the way the minimum wage rules apply to people working for therapeutic reasons?

A: See paragraph 16 of this Guide ('workers with a disability'). The Government have also prepared a special guidance note on this subject, 'The Minimum Wage and Therapeutic Work'. This can be ordered from the DTI publications orderline, tel: 0870 1502 500 or email: dtipubs@eclogistics.co.uk

20 Further information and contacts

National minimum wage enquiries

For assistance on the matters covered in this booklet, to register a complaint about under-payment of minimum wage or to order other guidance or leaflets, including those for workers in ethnic minority languages, you should: call the minimum wage helpline on 0845 6000 678 (local rates apply); or write to National Minimum Wage Enquiries

Freepost PHQ1
Newcastle upon Tyne
NE98 1ZH

If you simply want to order more copies of this guide: call the NMW Information Order Line on 0845 845 0360

There are also separate minimum wage helplines in Northern Ireland and Scotland. If you would prefer to speak to them they can be contacted on the following numbers:

Northern Ireland: 0845 6500 207
Scotland: 0845 600 1768

Please note that calls may be monitored or recorded in order to improve the quality of our service.

For further information about the minimum wage:

visit the DTI minimum wage website at
www.dti.gov.uk/er/nmw.

Minority languages

Short guides are available in Welsh. Translations of the workers short guide are available in the following minority languages: Arabic, Bengali, Gujarati, Punjabi, Hindi, Urdu, Chinese and Tamil. Call 0870 1502 500 to order your short guide. There is also a simultaneous translation service available at the helpline (0845 6000 678).

Alternative format versions

Short guides are also available in large print, Braille and on audio-cassette on demand.

Agricultural minimum wage

For assistance on the agricultural minimum wage you should:

- in England and Wales, call the Agricultural Wages Helpline 0845 0000 134;
- in Scotland, call the Agricultural Wages Helpline 0131 244 6397;
- in Northern Ireland, call the Agricultural Wages Helpline 02890 520813.

Accredited training

For further information about accredited training for the purposes of the minimum wage you should contact:

- **in England and Wales:**

Qualifications and Curriculum Authority
83 Piccadilly
London WYG 8QA
Tel: 020 7509 5555

● **in Scotland:**

The Scottish Qualifications Authority
Hanover House
24 Douglas Street
Glasgow G2 7NQ
Tel: 0845 279 1000

● **in Northern Ireland:**

Department for Employment and Learning
Adelaide House
39–49 Adelaide Street
Belfast BT2 8FD
Tel: 02890 257400

Employment Tribunal Service

For information about employment tribunal procedures you should call the Employment Tribunal Service enquiry line 0845 959775.

Advisory, Conciliation and Arbitration Service

For information about employment law in general you should call the Acas public enquiry line on 08457 474747

Employment and Low Pay Units

Information on the minimum wage and other employment rights can also be obtained from:

West Midlands 0121 643 3972

Scottish 0141 221 4491

Yorks. & Humberside 01924 443850

The Stationery Office Ltd

Copies of the National Minimum Wage Act 1998, National Minimum Wage Regulations 1999 and related legislation are available from The Stationery Office Parliamentary hotline, tel: 0345 023474. They can also be viewed on line at www.hmso.gov.uk

Copies of the Low Pay Commission's reports can be obtained from The Stationery Office via its Publication Centre tel: 0870 600 5522.

Chart of national minimum wage rates and the accommodation offset rates since April 1999

	Main Rate (workers aged 22+) £ per hour	Development Rate (workers aged 18-21) £ per hour	Development Rate (workers aged 22 +) £ per hour *	Workers aged 16-17 £ per hour
1 April 1999	3.60	3.00	3.00	--
1 June 2000	3.60	3.20	3.20	--
1 October 2000	3.70	3.20	3.20	--
1 October 2001	4.10	3.50	3.50	--
1 October 2002	4.20	3.60	3.60	--
1 October 2003	4.50	3.80	3.80	--
1 October 2004	4.85	4.10	4.10	3.00 **

* payable for 6 months to a person starting a new job with a new employer and doing accredited training

** workers aged 16-17 (above school leaving age) were not previously entitled to receive a minimum wage

Accommodation Offset

	Per Hour (p)	Per Day (£)	Weekly maximum (£)
1 April 1999	50p	2.85	19.95
1 October 2001	57p	3.25	22.75
1 October 2003	No longer applies	3.50	24.50
1 October 2004	No longer applies	3.75	26.25

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