



NATIONAL MINIMUM WAGE

Guidance on new system providing for 'fair' piece rates – 'rated output work'

OCTOBER 2004

If you have any enquiries about the minimum wage or if you think you are being underpaid, call the minimum wage helpline on:

0845 6000 678

For more detailed guidance call the minimum wage information line on:

0845 8450 360

and ask for a free copy of:
A detailed guide to the national minimum wage.



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Guidance on new system providing for 'fair' piece rates – 'rated output work'

A new system providing for 'fair' piece rates linked to the national minimum wage takes effect on **1 October 2004**. This system can apply to almost all output workers, including homeworkers. For the purposes of the minimum wage 'output work' means work that is paid wholly by reference to the number of pieces made or processed by the worker, or to some other measure of output such as the number of transactions or tasks completed by the worker.

Homeworkers are people who work for an employer but do not work at the employers' premises. They are entitled to the minimum wage, but are often paid according to a piece or output rate and in those circumstances will be output workers for the purpose of the minimum wage.

Note: The new system does not apply to agricultural workers who need to be paid the Agricultural Minimum Wage for each hour they work.

What is rated output work?

'Fair' Piece Rates

- On **1 October 2004** the present system of 'fair estimate' agreements for output workers will be replaced

by a new system known as 'rated output work', the effect of which will be to provide for 'fair' piece rates;

- Employers will be required either to pay their workers at least the minimum wage for every hour they work or the 'fair' piece rate for each piece produced or task performed, determined by reference to the rate of performance of an average worker. From **1 October 2004**, the 'fair' piece rate will have to be set so that workers of average speed can earn the minimum wage, and from **6 April 2005** the 'fair' piece rate will have to be multiplied up by a factor of 1.2;

For example, if from **1 October 2004**, a worker who works at the average speed produces 10 items an hour, the 'fair' piece rate for that particular item will be 48.5 pence (e.g. 10 x 48.5 pence and £4.85 is, from 1 October 2004, the main hourly rate of the minimum wage). In April 2005, this figure will have to be multiplied up by 1.2 for the rate to be 'fair' e.g. 48.5 pence x 1.2 = 58.2 pence.

- The 'rated output work legislation' refers to workers who produce a 'subject piece' or perform a 'subject task'. A subject piece is an item that is being made or produced (e.g. knitting a jumper). A subject task is one that is being performed (e.g. stuffing envelopes or delivering newspapers).

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 in practice control the hours that a worker works in relation to the piece or task e.g. he does not determine his starting or finishing time, or the length of time spent producing the pieces or performing the tasks;
- The employer has determined the 'mean hourly output rate' in relation to the type of piece or task in question. The 'mean hourly output rate' is the average number of pieces (including fractions) produced in an hour or the average number of tasks (including fractions) performed in an hour by workers of the employer doing that work;
- The worker must have been given a written notice containing specified information before the start of the relevant pay reference period (i.e. the period for which he or she is normally paid e.g. daily, weekly, monthly).

The effect of the rated output work system is that the average output worker – i.e. a worker that works at

the average speed – will be entitled to the minimum wage from **1 October 2004**. But by definition this means that workers who are slower than the average will not receive the minimum wage. From **6 April 2005**, employers will be required to multiply-up the 'fair' piece rate by a factor of 1.2. This means that most output workers, including those who work a little slower than the average worker, can expect to receive the minimum wage from that time onwards.

The way that the new legislation works is to say that the amount of time taken by a worker in producing (performing) the number of particular pieces (tasks) in his pay reference period is to be taken to be the amount of time that the average worker of the same employer (i.e. one who works at the 'mean hourly output rate' would have taken to produce (perform) that number of pieces (tasks). On **6 April 2005**, the legislation will say that the amount of time worked by the worker is taken as being the amount of time \times 1.2 that the average worker would have taken to produce or perform his output.

Note, it is not the case that all rates have to be uplifted for the entire workforce by 1.2 on the **6 April 2005**. Such an uplift would only have to take place where the employer was, before 6 April 2005, paying the minimum compliant rate i.e. 48.5p per item

where the 'mean hourly output rate' is 10 items per hour. If he were already paying a piece rate sufficiently above the minimum compliant rate then no increase would be necessary.

What an employer needs to do/know

1 The employer must perform the necessary tests to find the 'mean hourly output rate' for the subject piece or task in question.

An employer can:

- Carry out a test of all his workers making a particular piece or performing a particular task. To calculate the 'mean hourly output, rate', he then simply divides the total number of (as appropriate) pieces produced or such tasks performed per hour by the total number of workers tested; or
- He may test a sample of his workers. In this case the sample must be representative in terms of the speed at which they work. This is clearly vital. 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 will only be satisfactory if it is conducted in circumstances similar to those in which the workers actually work.

- We would expect employers to perform tests on 'key' pieces where possible, and possibly 'refresh' those tests from time to time. We believe that employers should seek to use a reasonable proportion of workers if testing a sample – 10% of the workers making the same piece may be reasonable, although this is for the employer (and if necessary the courts) to judge;
- If the number or identity of the employers' workers changes over time, the employer is not then required to perform another test or make another estimate unless he has reason to believe that the changes materially affect the 'mean hourly output rate';
- Tests or estimates of the average speed that comply with the requirements of the new 'rated output work' legislation are valid notwithstanding that they were undertaken before the coming into force of the Regulations (October 2004).

Example: determining the 'mean hourly output rate'

For example if an employer employs 30 workers and the tests reveals that 10 can produce 12 items an hour, 10 can produce 14 items an hour and 10 can produce 20 items an hour.

To calculate the 'mean hourly

output rate':

10 workers x 12 items = 120 items

10 workers x 14 items = 140 items

10 workers x 20 items = 200 items

Between them the 30 workers produce 460 items in an hour

460 divided by 30 = 15.33

Therefore the 'mean hourly output rate' is 15 and a third items an hour.

2 Alternatively, the employer can, in certain circumstances, estimate the speed of production of a particular piece or the speed of performance of a particular task.

- An estimate may be made where an employer has already tested to determine the 'mean hourly output rate' for another piece or task that is reasonably similar to the one in question. The employer may then make a fair adjustment to the 'mean hourly output rate' for the first piece or task to take account of the increased or decreased time needed to produce the second item or do the second task, and then use the adjusted rate for that item or task;
- An employer may also estimate the speed of production/performance 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, must make a fair adjustment to the rate that has already been determined through testing. For example, an employer may want to adjust a rate that has already been arrived at through testing factory workers to set the rate for homeworkers producing the same piece. The employers' adjustment to the factory workers' rate may be necessary, for example, because different tools are used by homeworkers or because the homeworkers have to unpack materials in order to produce the pieces in question;

- It will *not* be permissible for an employer to use this method to set a rate for a second piece and then make a further adjustment to the second rate to set the rate for a third piece. He must always refer directly to the first test;
- It is for employers to decide what a **representative** sample is in terms of speed and – if an employer chooses to use the estimating provisions – when **pieces/tasks** can be judged to be similar, and what is and is not a **fair adjustment**;
- It is important that employers take these requirements seriously. If the matter were to end up in the Courts the burden of proof would be on the

employer, under the provisions of the National Minimum Wage Act 1998, to show that he had complied with his obligations to pay the national minimum wage.

3 The employer must give each worker a written notice.

The notice must:

- Be issued before the start of the worker's pay reference period. If the terms of the notice have not changed, there is no need for a new notice before every pay reference period;
- Explain that, for the purposes of compliance with the minimum wage legislation, the worker will be treated as working for a certain period of time;
- State that, for the purposes of determining this period of time, the employer has conducted a test or made an estimate of the average speed at which his workers produce the piece or perform the task;
- 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).

Where a worker multi-tasks – does/makes a number of different things for the same employer – one notice could be given referring to all the different jobs and rates. However this may make the notice unwieldy and complicated. Employers may wish to consider providing his workers with a different notice for each different job.

It is important to note that if a worker is not provided with a written notice that complies with the conditions outlined above, or the employer has not complied with the regulations when setting the piece rate, then 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.

It is a legal requirement for employers to keep copies of the written notices they have provided to their workers and details of how they set each fair piece rate.

A model written notice is included as an annex to this guidance.

From 1 October 2004 the following minimum rates apply

Main hourly rate (22+): £4.85

Development Rate (18-21): £4.10

16-17 year olds: £3.00 an hour
for those who are above the age of
compulsory schooling (excluding
those on apprenticeships).

How can I find out more?

For further information, or if you think you are being underpaid, you can call the Inland Revenue minimum wage helpline number on **0845 6000 678**. Workers' details will remain confidential.

Calls will be charged at local rates. To help us improve the quality of our service, your call may be monitored or recorded.

Alternatively, you can write to minimum wage enquiries, Freepost PHQ1, Newcastle Upon Tyne NE 98 1ZH. Information is also available at **www.dti.gov.uk/er/nmw**

Help is also available by contacting

the National Group on Homeworking
Employment Rights Advice and
Information line on 0800 174 095.

This leaflet is available in certain
ethnic minority languages (Bengali,
Urdu, Tamil, Punjabi, Gujarati, Hindi).
Call 0870 1502 500 or write to DTI
Publications Order Line, Ad mail 528,
London SW1W 8YT

This leaflet is available in large
print, Braille and on audio cassette
on demand. Call **0845 602 4027**,
or write to DTI National Minimum
Wage, Freepost SE2693,
London SE5 7XU.

For copies of the National Minimum
Wage Act 1998 (and associated
Regulations) and The National
Minimum Wage Regulations 1999
(Amendment) Regulations 2004
(which introduce the system of
'fair piece rates'), call the Stationery
Office Parliamentary hotline on
0845 7023 474

**The information contained in this
leaflet is intended to provide general
guidance only. It should not be
regarded as a complete and
authoritative statement of the law.**

Annex

Rated output work (fair piece rate) notice

To: *[insert name of worker]*

From: *[insert name of employer]*

- 1 This notice is to tell you that, in order to comply with the national minimum wage legislation, you will be treated as working for a certain period of time when doing your job of *[insert brief description of piece produced/task performed e.g. knitting jumpers, stuffing envelopes, delivering newspapers etc]* during the next and subsequent *[insert type of applicable pay reference periods e.g. days, weeks or months]*.
- 2 To calculate the period of time you will be treated as working, I/we have conducted a test of or estimated the average speed at which my/our workers work who do the same job.
- 3 The mean hourly output rate for the job is *[insert number]* per hour.
- 4 The rate you will be paid for doing the job is *[insert pay]* per *[insert type of item e.g. jumper, envelope, newspaper]*.
- 5 The telephone number of the national minimum helpline is 0845 6000 678.

Date: *[insert date]*

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