



National Minimum Wage and Accommodation Offset

April 2007

**NATIONAL MINIMUM WAGE
GUIDANCE NOTE**

**THE NATIONAL MINIMUM WAGE
AND
THE ACCOMMODATION OFFSET**

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It is important to note that the information and examples contained in this note are intended to provide general guidance. They reflect the Government's understanding of the way the law operates in practice and are not to be regarded as complete or authoritative statements of the law.

Further information on the national minimum wage is available at:
www.dti.gov.uk

A detailed guide to the National Minimum Wage, containing general guidance on worker's rights and employer's obligations under the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999 is available from the NMW Order Line on 0845 854 0360

1. Executive Summary

To see whether a worker is being paid the national minimum wage (NMW), his¹ hourly rate of pay must be calculated in a particular way. By law, his hourly rate of pay must be at least the appropriate national minimum wage rate.

To find the worker's hourly rate of pay, his *national minimum wage pay* must be divided by the total number of hours for which national minimum wage must be paid. *National minimum wage pay* is the amount of a worker's pay which must be taken into account for national minimum wage purposes in a pay reference period.

Under the national minimum wage legislation, the provision of accommodation by the employer is the only benefit in kind that can count towards a worker's national minimum wage pay. There is a limit to the amount that an employer providing accommodation can count towards national minimum wage pay. That limit is referred to in this guidance as the accommodation offset.

The accommodation offset is calculated at a rate of £4.15 per day (rising to £4.30 from 1st October 2007) for each day that the employer makes the accommodation available to the worker in a pay reference period (up to a maximum of £29.05 a week rising to £30.10 from 1st October 2007).

The accommodation offset provisions will apply whenever an employer provides accommodation to the worker.

When the accommodation is provided free of charge, the notional value of the accommodation offset counts towards national minimum wage pay so the effect may be that a worker's contractual pay can be less than the NMW.

Various specific components of a worker's pay can be counted towards national minimum wage pay other components must

¹ To keep this document as concise as possible, we have used 'he' and 'his' to refer to both male and female workers and employers.

be excluded. Where the employer charges the worker for the accommodation, either by making a deduction from the worker's pay or accepting a payment from the worker, the worker's national minimum wage pay will only be affected if the employer charges more than the accommodation offset. The amount of the charge over and above the level of the offset will reduce the worker's pay for national minimum wage pay purposes.

The Government takes the view that the employer provides the worker with accommodation in a broad set of circumstances, not only in situations where he owns the property occupied by the worker. Further details are set out in this guidance.

The Government can only give general guidance on the way it understands the law to operate. Individual circumstances and arrangements vary. Whether or not an employer is regarded as providing accommodation will depend on the facts of the particular case and ultimately, only the tribunal and courts can decide. In cases of doubt, independent legal advice should be sought.

2. Introduction

2.1 Aim of this guidance

This guidance is intended to help individuals and organisations understand how the accommodation offset applies in relation to the national minimum wage.

This guidance has been produced by the Department for Trade and Industry (DTI) in conjunction with Her Majesty's Revenue & Customs (HMRC), the Department for Environment, Food and Rural Affairs (Defra), and other interested parties.

It has been produced in response to the findings of the 2006 Low Pay Commission Report. (The Low Pay Commission is the independent statutory body, which advises the Government on national minimum wage issues).

In its report the Low Pay Commission stated:

"We recommend that the Government update existing guidance on the accommodation-offset so that it is as clear and comprehensive as possible, and ensure that information is available on relevant websites.

...We also recommend that it should make available guidance on the types of circumstances in which it will deem the employer to be the accommodation provider...."

'It is also recommended that the Government should implement legislative measures to prevent employers using the device of a separate accommodation company to evade the offset'

2.2 Reasons for the accommodation offset

In its original recommendation (*June 1998*) the Low Pay Commission (LPC) recommended that accommodation should be the only benefit in kind to count towards the national minimum wage.

This recommendation was designed to be a protective measure. By recommending an accommodation offset, the LPC intended to discourage employers from recouping the

national minimum wage paid to a worker by levying excessive accommodation charges. When recommending the level for the accommodation offset, the Low Pay Commission did not seek to reflect the actual cost to the employer or the actual value of renting accommodation for the worker. Allowing a market rate would not have recognised the advantages to the employer of providing accommodation. Further, the standard and types of accommodation and consequently the market value of accommodation can vary considerably.

In recent years the accommodation offset has risen in line with increases in the adult national minimum wage.

2.3 Enforcement timetable

The DTI recognises the need for more detailed guidance on the accommodation offset as some employers have been uncertain as to its application in some situations.

Arrears are due when an employer has not paid national minimum wage as a result of a failure to properly apply the accommodation offset. HMRC and Defra already enforce arrears in the majority of circumstances set out in this guidance. They will continue to enforce arrears in these circumstances and will commence enforcement in the other areas set out in this guidance with effect for pay reference periods starting on or after 1 April 2007.

- the employer's business and the landlord's business have the same owner or business partners, directors or shareholders in common ; or
- the employer business, its owner, one of its business partners, shareholders or directors derives some financial and/or other benefit from the provision of accommodation and a family member of that owner, business partner, shareholder or directors is the owner, business partner, shareholder or director of the landlord's business.

The circumstances in which an employer is regarded as providing accommodation to a worker is explained in more detail in paragraph 4.5.

This does not affect the rights of individual workers to bring proceedings before employment tribunals or the civil courts to recover sums which they believe they are owed as a result of not receiving the national minimum wage.

3. Background

3.1 Entitlement to the national minimum wage

The National Minimum Wage Act 1998 (“the Act”) gives most workers in the United Kingdom the right to be paid at least the national minimum wage by their employer.

Under section 1 of the Act, workers generally qualify for the national minimum wage if they have ceased to be of compulsory school age and are working (or ordinarily working) in the United Kingdom. This is the starting point for legal entitlement to the national minimum wage. The full picture can only be understood by reference to the rest of the Act and subordinate legislation known as The National Minimum Wage Regulations 1999, as amended (“the Regulations”).

This guidance does not attempt to provide a full analysis of the legislation, but explains those provisions of the National Minimum Wage Regulations 1999, which are relevant to the issues of the accommodation offset.

3.2 Entitlement to the agricultural minimum wage

Workers employed to undertake agricultural work are entitled to be paid at least the appropriate minimum set out in the Agricultural Wages Order² for every hour of agricultural work undertaken.

The Agricultural Wages Order provides that accommodation should be treated as a benefit in kind but only in situations where accommodation is provided in accordance with a worker’s contract of employment.

The national minimum wage accommodation offset provides a safety net for agricultural workers in cases where the employer is providing accommodation but the agricultural minimum wage offset does not apply. The Agricultural Wages Order provisions do not apply where accommodation is

² Separate Agricultural Wages Orders apply in England and Wales, Scotland and Northern Ireland.

provided by the employer outside a worker's contract of employment. In this situation the worker must be paid at least the national minimum wage in line with this guidance.

Defra will enforce the national minimum wage provisions in accordance with this guidance where they apply to an agricultural worker in England and Wales. For advice on how the guidance should be applied in specific cases contact the Defra Agricultural Wages Helpline.

Scotland

Scottish Ministers responsibility for securing compliance with the Agricultural Wages (Scotland) Act 1949 and the Scottish Agricultural Wages Board's Wages Orders is discharged by the Scottish Executive Environment and Rural Affairs Department by way of random control test inspections and investigation of complaints.

Northern Ireland

The Northern Ireland Minister's responsibility for securing compliance with the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 and the Northern Ireland Agricultural Wages Board's Wages Orders is discharged by the Department of Agriculture and Rural Development by way of investigation of complaints.

4. Accommodation and the National Minimum Wage

4.1 Calculation of a worker's hourly rate of pay

To see whether a worker is being paid the national minimum wage, his hourly rate of pay must be calculated in a particular way. Various specified components of the pay he receives count towards the national minimum wage and other specified components have to be excluded. The total pay which counts towards the national minimum wage is referred to as a worker's national minimum wage pay.

A full explanation of how to calculate the hourly rate of a worker's national minimum wage pay to compare it with the rate of the national minimum wage is provided at:

<http://www.dti.gov.uk/files/file11671.pdf>

For national minimum wage purposes, a worker's hourly rate of pay in a given pay reference period is obtained by dividing his national minimum wage pay for that period by the total number of working hours for which he must be paid the national minimum wage.

4.2 Calculating the accommodation offset and the effect on national minimum wage pay

Accommodation is the only benefit in kind that can count towards national minimum wage pay. An employer providing accommodation to a worker must take into account the effect of the accommodation offset when calculating the worker's national minimum wage pay.

The accommodation offset is £4.15 for each day (midnight to midnight) that the employer provides accommodation to the worker in the pay reference period. The effect on national minimum wage pay depends on whether or not the employer charges for the accommodation.

- Where an employer provides accommodation free of charge

Where the employer provides accommodation to a worker free of charge the notional amount of the accommodation offset counts towards national minimum wage pay. For a demonstration of how this works see examples 1 to 3 below:

Example 1

A worker is entitled to be paid the national minimum wage at the main rate (£5.35 per hour). His pay reference period is a week. He is paid £5.35 an hour for a 45 hour week. Accommodation is provided without charge by his employer 5 days a week.

Gross weekly pay: $£5.35 \times 45 = £240.75$

Rent charged = £0

To calculate his national minimum wage pay:

Identify the applicable notional offset: $£4.15 \times 5 = £20.75$

Add the applicable notional offset to his gross weekly pay:
 $£240.75 + £20.75 = £261.50$

Find his hourly rate by dividing national minimum wage pay by hours worked: $£261.50 \div 45 = £5.81$ per hour.

For national minimum wage purposes, the worker's hourly rate is £5.81 an hour. The worker is paid more than the national minimum wage.

Example 2

A worker is entitled to be paid national minimum wage at the main rate (£5.35 per hour). His pay reference period is a week. He is paid £4.50 an hour for a 45-hour week. £4.50 is below the current NMW main rate. Accommodation is provided without charge by his employer 7 days a week.

Gross weekly pay: $£4.50 \times 45 = £202.50$

Rent charged: = £0

To calculate national minimum wage pay:

Identify the applicable notional offset $£4.15 \times 7 = £29.05$

Add the notional offset to the gross weekly pay:

$£202.50 + £29.05 = £231.55$

Find his hourly rate by dividing national minimum wage pay by hours worked: $£231.55 \div 45 = £5.15$ per hour.

For national minimum wage pay purposes, the worker's hourly rate is £5.15 an hour. The worker is being paid 20p per hour below the national minimum wage and the employer must increase his hourly rate to £4.70.

Example 3

A worker is entitled to be paid national minimum wage at the main rate (£5.35 per hour). His pay reference period is a week. He is paid £5.00 an hour for a 45-hour week. £5.00 is below the current NMW main rate. Accommodation is provided without charge by his employer 7 days a week.

Gross weekly pay: $£5.00 \times 45 = £225$

Rent charged: = £0

To calculate national minimum wage pay:

Identify the applicable notional offset $£4.15 \times 7 = £29.05$

Add the applicable notional offset to the gross weekly pay:
 $£225.00 + £29.05 = £254.05$

Find his hourly rate by dividing national minimum wage pay by hours worked: $£254.05 \div 45 = £5.65$ per hour.

For national minimum wage pay purposes, the worker's hourly rate is £5.65 an hour. The worker is being paid 30p per hour above the national minimum wage.

- Where the employer charges for the accommodation

Where the employer charges the worker for accommodation, either by making a deduction from the worker's pay or accepting a payment from the worker, then the effect on national minimum wage pay depends on whether the charge is below, at or above the accommodation offset.

If the employer charges the same as the accommodation offset or less, the amount charged for accommodation has no effect on the calculation of national minimum wage pay. This is shown in Example 4 below.

Example 4

A worker is entitled to be paid national minimum wage at the main rate (£5.35 per hour). His pay reference period is a week. He is paid £5.00 an hour for a 40 hour week. £5.00 is below the current NMW main rate. Accommodation is provided by his employer 7 days a week who deducts £10 per week from his wages for rent.

Gross weekly pay $\text{£}5.00 \times 40 = \text{£}200$

Rent charged = £10.

To calculate national minimum wage pay:

Identify the applicable offset = $\text{£}4.15 \times 7 = \text{£}29.05$

As the rent of £10 is less than the applicable offset of £29.05 the offset has no effect on national minimum wage pay.

His national minimum wage pay is therefore £200

Find his hourly rate by dividing national minimum wage pay by the hours worked:

$\text{£}200 \div 40 = \text{£}5.00$ per hour

For national minimum wage purposes the worker's hourly rate is £5.00 per hour. The worker is being paid 35p per hour below the national minimum wage and the employer must increase his hourly rate to £5.35.

If the employer charges more than the accommodation offset, the amount charged over and above the level of the offset reduces national minimum wage pay. In these circumstances the hourly wage rate has to be increased or the charge for accommodation reduced to ensure the worker receives at least the national minimum wage. This is shown in Examples 5, 6 and 7 below.

Example 5

A worker is entitled to be paid national minimum wage at the main rate (£5.35 per hour). His pay reference period is a week. He is paid £6.00 an hour for a 45 hour week. Accommodation is provided by his employer 7 days a week who deducts £75.00 a week from his wages for rent.

Gross weekly pay: $£6.00 \times 45 = £270$

Rent charged: = £75

To calculate national minimum wage pay:

Identify the applicable offset: $£4.15 \times 7 = £29.05$

The amount charged in excess of the accommodation offset is: $£75 - £29.05 = £45.95$.

Subtract the excess from gross pay to calculate national minimum wage pay: $£270 - £45.95 = £224.05$.

Find his hourly rate by dividing national minimum wage pay by the hours worked: $£224.05 \div 45 = £4.98$ per hour.

For national minimum wage purposes the worker's hourly rate is £4.98 per hour despite the worker being paid £6.00 per hour. The rent charged in excess of the accommodation offset brings his pay below the national minimum wage. The worker is being paid 37p per hour below the national minimum wage and the employer must increase his hourly rate from £4.98 to £5.35, which means paying the worker £6.37 per hour.

Example 6

A worker is entitled to receive the national minimum wage at the 18 – 21 year old rate (£4.45 per hour). His pay reference period is a week. He is paid £4.45 an hour for a 45 hour week. Accommodation is provided by his employer 5 days a week who deducts £43 a week from his wages for rent.

Gross weekly pay: $£4.45 \times 45 = £200.25$

Rent charged = £43.00

To calculate national minimum wage pay:

Identify the applicable offset: $£4.15 \times 5 = £20.75$

The amount charged in excess of the accommodation offset is: $£43 - £20.75 = £22.25$

Subtract the excess from the gross pay to calculate national minimum wage pay: $£200.25 - £22.25 = £178.00$

Calculate the worker's hourly rate by dividing national minimum wage pay by hours worked: $£178 \div 45 = £3.96$ per hour

For national minimum wage pay purposes, the worker's hourly rate is £3.96 per hour despite the worker being paid £4.45 per hour. The rent charged in excess of the accommodation offset brings his pay below the national minimum wage. The worker is being paid 49p per hour below the national minimum wage 18-21 year old rate and the employer must increase his hourly rate from £3.96 to £4.45, which means paying £4.94 per hour.

Example 7

A worker is entitled to receive national minimum wage at the main rate (£5.35). His pay reference period is a week. He is paid £6.00 an hour for a 28 hour week. Accommodation is provided by his employer 6 days a week who deducts rent of £43 a week from the worker's wages.

Gross weekly pay: $£6.00 \times 28 = £168.00$

Rent charged: £43.00

To calculate national minimum wage pay:

Start with the gross weekly pay: £168.00

Identify the applicable offset: $£4.15 \times 6 = £24.90$

The amount charged in excess of the accommodation offset is: $£43.00 - £24.90 = £18.10$

Subtract the excess from the gross pay to find the worker's national minimum wage pay: $£168.00 - £18.10 = £149.90$

Calculate the worker's hourly rate by dividing national minimum wage pay by the hours worked: $£149.90 \div 28 = £5.35$ an hour.

For national minimum wage pay purposes, the worker's hourly rate is £5.35 an hour. The worker is being paid the national minimum wage.

4.3 Accommodation related charges

The Court of Appeal³ has recently held that any charge the worker is obliged to pay⁴ as a precondition of being provided

³ Leisure Employment Services Limited and The Commissioners for Her Majesty's Revenue and Customs, Case No: A2/2006/0880

⁴ This applies whether the worker is required or has an option whether to take up the accommodation.

with accommodation by an employer (including charges for gas and electricity, laundry and provision of furniture) must be regarded as a charge paid in respect of the provision of accommodation. These charges should therefore be taken into account when determining the total charge for the provision of accommodation and when calculating national minimum wage pay taking into account the accommodation offset rules.

4.4 Treatment of absences and time work

If a worker is paid solely according to the number of hours he is at work, the work is time work. When a time worker is absent from work, the time he is absent and the pay he receives for that absence are excluded when calculating whether he has been paid the national minimum wage. More detailed guidance on time work and the other types of work covered by the National Minimum Wage Regulations 1999 can be found at: <http://www.dti.gov.uk/files/file11671.pdf>

Normally, when an employer provides accommodation to a worker and charges for that accommodation, the amount of the charge which exceeds the accommodation offset will reduce the worker's national minimum wage pay. However, special rules apply when a time worker has been absent from work and the following apply:

- the employer is charging for accommodation by making a deduction from the worker's pay or accepting payment from the worker; and
- a time worker has been absent from work for a day or more in a pay reference period, for example because he has been sick or taken holiday; and
- has been paid at least the national minimum wage for the hours for which he has been absent; and
- the hours he actually works are less than they would normally be in the pay reference period because he has been absent; and
- the deduction or charge the employer makes for accommodation does not increase because of the worker's absence from work.

If the above conditions apply, the deduction or payment for accommodation has to be adjusted before applying the accommodation offset in accordance with the following formula:

The deduction or payment is multiplied by the number of hours the worker actually worked. That total is then divided by the total number of hours the worker would have worked (including any hours he actually worked) if he had not been absent.

Only the amount of the adjusted deduction or payment, which exceeds the accommodation offset will reduce the worker's national minimum wage pay. For a demonstration of how this works see Example 8 below.

Example 8

A time worker is entitled to be paid national minimum wage at the main rate (£5.35 per hour). His pay reference period is a week. He is paid £7.50 an hour for a 40 hour week. Accommodation is provided by his employer 5 days a week who deducts £90 per week from his wages for rent.

Gross weekly pay: $£7.50 \times 40 = £300$

Rent charged: = £90

To calculate his national minimum wage pay.

Identify the applicable offset: $£4.15 \times 5 = £20.75$

The amount charged for accommodation in excess of the accommodation offset is:

$£90 - £20.75 = £69.25$

Subtract the excess from gross pay to calculate the time worker's national minimum wage pay in a normal week $£300 - £69.25 = £230.75$.

The worker's hourly rate in a normal week is:
 $£230.75 \div 40 = £5.77$

For national minimum wage purposes, the worker's hourly rate is £5.77 an hour. The worker is paid more than the national minimum wage.

The following week, the same time worker is absent for 2 days because he is sick. He is however still paid £300 for the week. Special rules apply in these circumstances.

Number of hours normally worked: 40 hours.

Number of hours actually worked: 24 hours.

Weekly pay remains: £300

Worker's pay for the time he actually worked is: $24 \times £7.50 = £180$.

Rent charged remains: £90

The applicable offset remains: $£4.15 \times 5 = £20.75$.

The amount charged for accommodation in excess of the accommodation offset does not remain as £69.25. The following adjustment needs to be made:

Multiply the rent charged by the number of hours the time worker actually worked. Divide this by the number of hours he would have worked had he not been absent: $(£90 \times 24) \div 40 = £54$. This adjusted figure is used in place of the rent actually charged to calculate the amount charged for accommodation in excess of the accommodation offset: $£54 - £20.75 = £33.25$.

To calculate the national minimum wage pay:

A time worker's pay for national minimum wage purposes does not include pay he has received for the time when he has been absent from work. The worker's pay for the time he actually worked is £180.

Subtract the excess from the pay the worker received for the time he actually worked from the adjusted figure in respect of

the accommodation offset to calculate the worker's national minimum wage pay in that week: $£180 - £33.25 = £146.75$

The worker's hourly rate in the week he has been absent is:
 $£146.75 \div 24 = £6.11$

For national minimum wage purposes, the worker's hourly rate is £6.11 an hour. The worker is paid more than the national minimum wage.

If the worker is not paid for the two days he is absent the special rules to adjust the amount of the accommodation charge will not apply.

Weekly pay: $£7.50 \times 24 = £180$

Rent charged £90

To calculate his national minimum wage pay.

Identify the applicable offset: $£4.15 \times 5 = £20.75$

The amount charged for accommodation in excess of the accommodation offset is: $£90 - £20.75 = £69.25$

Subtract the excess from gross pay to calculate national minimum wage pay in a normal week: $£180 - £69.25 = £110.75$

Workers hourly rate for the week is: $£110.75 \div 24 = £4.61$

For national minimum wage purposes the worker's hourly rate is £4.61 per hour despite the worker being paid £7.50 per hour. The rent charged in excess of the accommodation offset brings his pay below the national minimum wage. The worker is being paid 74p per hour below the national minimum wage and the employer must increase his hourly rate from £4.61 to £5.35, by increasing his hourly rate to £8.24.

4.5 When is accommodation provided by the employer?

The accommodation offset rules apply where the employer is providing the worker with accommodation.

In a recent EAT decision⁵ Mr Justice Elias agreed that in interpreting the NMW Regulations he should adopt a purposive approach to the construction of the provisions quoting "To find out the meaning of particular provisions of social legislation of this character calls, in the first instance, for a purposive approach to the act as a whole to ascertain the social ends it was intended to achieve and the practical means by which it was expected to achieve them". He said that he took the purpose to be "...and a desire to ensure that workers should receive cash in hand of at least the NMW, save where carefully circumscribed exemptions apply."

In line with the legislation's overall social purpose, the accommodation offset provisions are designed among other things to ensure that employers cannot avoid paying their workers the national minimum wage by levying excessive charges for accommodation.

The Government understands that an employer may provide accommodation in a wide range of circumstances and not merely in situations where he owns the property occupied by the worker.

The employer will be considered as providing accommodation in all the following circumstances whether or not the accommodation is let by the employer or a third party:

- the accommodation is provided in connection with the worker's contract of employment; or
- a worker's continued employment is dependent upon occupying particular accommodation; or
- a worker's occupation of accommodation is dependent upon remaining in a particular job

⁵ Commissioners for HM Revenue and Customs v Leisure Employment Services Ltd
UKEAT/0106/06/MAA

Where the provision of accommodation by the employer and the worker's employment are not dependent upon each other, the employer may be considered to be providing accommodation in circumstances where:

- the employer is the worker's landlord either because he owns the property or because he is subletting the property; or
- the employer and the landlord are part of the same group of companies or are companies trading in association;
- the employer's and the landlord's businesses have the same owner, or business partners, directors or shareholders in common; or
- the employer or an owner, business partner, shareholder or director of the employer's business receives a monetary payment and/or some other benefit from the third party acting as landlord to the workers.

For the purposes of the accommodation offset rules, third parties will include:

- businesses and companies which are separate legal entities to the employer; and
- individuals including those who are family members of a director, business partner, shareholder, or owner of the employing business; and
- businesses or companies with a director, shareholder, owner or business partner who is a family member of a director, shareholder, owner or business partner of the employing business.

The accommodation offset will apply whenever the employer is providing accommodation regardless of whether the worker can choose whether or not to occupy the accommodation. Even if the provision of accommodation is optional, where the worker chooses to accept the offer, the accommodation offset will apply.

When enforcing the national minimum wage, enforcement officers and tribunals will look at the facts of each individual case before determining whether an employer is providing accommodation.

5. Frequently Asked Questions

Q1. Can benefits in kind other than accommodation count towards national minimum wage pay?

A. Accommodation is the only benefit in kind that can count towards national minimum wage pay.

Q2. Where accommodation is offered on an optional basis, does the accommodation offset apply where a worker takes up the offer of accommodation?

A. The accommodation offset will apply whenever the employer provides accommodation regardless of whether the worker could have chosen not to occupy the accommodation or whether the worker actually uses it. If accommodation is optional to a worker and he chooses to accept the offer then the accommodation offset will apply.

Q3. What about migrant workers who are provided with accommodation and who work alongside workers who are not provided with accommodation? The employer incurs additional costs to provide accommodation to the migrant workers. Shouldn't the employer be able to recoup his costs from the migrant workers?

A. These rules do not prevent an employer from arranging accommodation for his workers, but if the employer is **providing** accommodation, the accommodation offset will apply. (See bullets under section 4.4). The rate of the offset was designed to be a protective measure, the LPC intended to discourage employers from recouping the minimum wage paid to a worker by levying excessive accommodation charges. When recommending the level of the offset the LPC did not seek to reflect the cost to the employer or the actual value of renting accommodation to the worker.

Q4. How can a migrant worker get accommodation if not through his employer?

A. Migrant worker's can obtain information from a variety of sources, including by contacting the local council office for advice on hostels or bed and breakfast accommodation. Workers can also contact Shelter on freephone 0808 800 4444, or the Migrant Advisory and Advocacy Service on 020 8571 7950 who can advise on employment and housing rights.

Q5. Will the employer need to operate the accommodation offset provisions if the landlord to the workers is a family member of an owner, director, shareholder or partner of the employing business?

A. The accommodation offset provisions may apply. This will depend on whether the employer can be shown to derive a benefit from the arrangement as explained in section 4.5.

Q6. Can an employer charge more than the accommodation offset amount for accommodation?

A. Yes. But an employer must ensure that the worker is not paid less than the national minimum wage once the accommodation offset is taken into account. Any sum charged in excess of the offset will reduce a worker's pay for national minimum wage pay purposes.

Q7. In what circumstances can an employer deduct rent from a worker's pay?

A. An employer can make deductions from a worker's pay if there is a relevant provision in the worker's contract or a legislative provision, which authorises him to do so, or the worker has first given his written consent or agreement. This rule is found in section 13 of the Employment Rights Act 1996 and applies to deductions for rent regardless of whether the employer is collecting rent for himself or another landlord, or whether the accommodation offset applies.

Section 8(2)(a) requires that any deductions from gross pay and the purpose for which they are deducted must be set out in a written itemised pay statement. This applies in all circumstances where an employer makes any deduction. If an

employer deducts £60 a week for accommodation there is no requirement in Section 8 to state that £29.05 counts towards the accommodation offset, all the employer needs to do is show the deduction of £60 and state its purpose.

Q8. If an employer, as a pre-condition of providing accommodation to a worker, requires him to pay for gas and electricity which he deducts from wages, is this caught by the accommodation offset rules?

A. Yes the amount that he deducts for gas and electricity per day must be included in the daily allowance, currently set at £4.15. If the worker is responsible for paying the utility companies directly, the accommodation offset rules will not apply to these payments.

Q9. Will the accommodation offset provisions be applied if a landlord arranges employment for a worker with an employer other than himself?

A. It will depend on the relationship between the employer and the landlord and whether the employer can be shown to derive a benefit from the arrangement. If the relationship between the landlord and employer is one of spouse, business partners, etc it may lead to the conclusion that it is the employer who is providing the worker with accommodation rather than a landlord finding work for his tenant. Please refer to bullets under section 4.5.

Q10. Will the accommodation offset provisions apply if an employer arranges accommodation for a worker with a third party.

A. If there is no connection between the employer and the accommodation provider and the employer derives no benefit from the arrangement the accommodation offset provisions will not apply. But again if the relationship between the landlord and employer is one of spouse, business partner etc, it may lead to the conclusion that the employer is providing the accommodation for the worker. Please refer to section 4.5.

Q11. How will the Government enforce the provisions in this guidance?

A. The position is set out in section 2.3 on enforcement.

Q12. Do different arrangements apply to people undertaking agricultural work?

A. Yes. The accommodation offset provisions of the Agricultural Wages Order apply in a narrower set of circumstances. They apply where an agricultural worker is provided with either a house or other accommodation by his employer and that accommodation is provided in accordance with the worker's contract of employment. Please refer to section 3.2.

Q13. What are the Agricultural Wages Order provisions relating to the accommodation offset?

A. Where the employer provides a house to the worker, the maximum deduction from the appropriate agricultural minimum wage is £1.50 per week. Where the employer provides other accommodation, the maximum deduction from the appropriate agricultural minimum wage will be £4.15 from 1 October 2006 for each day accommodation is provided (£4.30 from 1 October 2007).

Q14. What happens where the Agricultural Wages Order provisions do not apply?

A. The Agricultural Wages Order provisions do not apply where either a house or other accommodation is provided by the employer outside a worker's contract of employment. In this situation the worker must be paid at least the national minimum wage less the national minimum wage accommodation offset.

Q15. Where can I obtain further advice on the Agricultural Wages Order provisions?

A. Advice can be obtained from the Defra Agricultural Wages Team on 0845 0000 134 or 01270 754298.

Q16. What arrangements apply to Seasonal Agricultural Workers Scheme (SAWS) students?

A. SAWS operators are obliged to abide by the Agricultural Wages Order and national minimum wage provisions, as are other employers within the agricultural sector. The relevant provisions will be determined by reference to the nature of the work done and the terms of the workers contract. The only condition imposed by Work Permits (UK) is that employers within the SAWS will not be permitted to make deductions from pay on behalf of third party accommodation suppliers.

Further information on national minimum wage issues can be obtained from the National Minimum Wage Helpline on 0845 6000 678 or by writing to:

National Minimum Wage Enquires
Freepost PHQ1
Newcastle Upon Tyne
NE98 1ZH

