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Date 3 November 2003

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**MINIMUM WAGE REGULATIONS – PROPOSAL TO INTRODUCE
FAIR PIECE RATES**

Please find attached draft Regulations designed to replace the present system of fair estimate agreements with a system of fair piece rates. This follows an earlier consultation exercise between February and May this year on this subject. Our intention is to lay Regulations before Parliament in the New Year so that they come into force on 6 April 2004.

Comments on the draft Regs would be welcomed. In particular we would welcome views on: -

- The point that output workers must be paid the minimum wage for all hours worked, or paid under a system called rated output work (regulation 24);
- The suggestion that each worker must be given a written notice making it clear that he is entitled to be paid a fair piece rate (regulation 25);
- The point that the employer must pay each worker for the number of hours that a person working at the mean hourly output rate that it takes to produce the number of pieces made, multiplied by a fraction of 120% (regulation 26) and;
- How the employer determines the mean hourly output for each type of piece (regulation 27).

Comments should be submitted to me no later than 23rd January 2004 at the above address or at Mike.O'Donnell@dti.gsi.gov.uk. Meetings with interested groups before then would be welcomed.

Yours sincerely

Mike O'Donnell,
Senior Policy Adviser, National Minimum Wage

NATIONAL MINIMUM WAGE
REGULATIONS

CONSULTATION ON DRAFT
REGULATIONS TO INTRODUCE
FAIR PIECE RATES FOR
OUTPUT WORKERS

Issued: 03 November 2003

Respond by: 23 January 2004

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N.B. Your comments may be quoted unless you advise us to treat your response as confidential

CONSULTATION ON DRAFT REGULATIONS TO INTRODUCE FAIR PIECE RATES FOR OUTPUT WORKERS

Output work

24. -(1) The output work of a worker in a pay reference period relating to a type of piece produced, shall be the number of hours spent by the worker during the pay reference period in producing that type of piece, except where the output work relating to that type of piece is rated output work.

(2) Output work is rated output work if –

- (a) it satisfies the conditions in paragraph (1) of regulation 25, and
- (b) it is work in respect of which the employer has given the worker a notice that satisfies the requirements of paragraph (2) of regulation 25.

Rated output work: conditions and notice

25. -(1) The conditions referred to in regulation 24(2)(a) are –

- (a) that the output work relating to the type of piece in question (“the subject piece”) is work in respect of which the worker’s contract does not set any normal, minimum or maximum working hours;
- (b) that the employer does not in practice determine or control the hours worked by the worker in relation to the subject piece; and
- (c) that the employer has determined the mean hourly output for the subject piece as defined in paragraph (2) of regulation 26.

(2) A notice satisfies the requirements of this paragraph if –

- (a) it was given in writing to the worker at any time before the beginning of the pay reference period (whether or not it was given before the beginning of, and had effect in relation to, any earlier pay reference periods), and
- (b) it contains the following -
 - (i) a statement that it is being given to inform the worker that, for the purpose of securing compliance with the national minimum wage legislation, he will be treated, in respect of his production of the subject piece during the pay reference period, as working for a certain period of time,

- (ii) a statement that for the purpose of determining the period of time the worker will be treated as working, the employer has conducted a test or, where applicable, made an estimate of the average speed at which workers employed by the employer produce the subject piece;
- (iii) a statement of the mean hourly output for the subject piece and of the rate to be paid to the worker for the production of a single subject piece,

and gives the telephone number of one of the national minimum wage helplines, identifying the number as a national minimum wage helpline number.

Rated output work: determination of hours worked

26. (1) Where output work is rated output work, the number of hours of output work spent by the worker in producing subject pieces during the pay reference period shall be treated as being [120 per cent.] of the number of hours that a worker producing the mean hourly output would have taken to produce the number of subject pieces produced by the worker in the pay reference period.

(2) In this regulation and regulation 25 “mean hourly output” means the average number (including any fraction) of subject pieces, or fraction of a piece, produced in an hour by workers of the employer producing the subject piece as determined in accordance with regulation 27.

(3) If the employer has informed the worker in writing before the beginning of the pay reference period of the maximum number of subject pieces that the worker is required to produce in that pay reference period and the worker produces a greater number, the number of subject pieces produced by the worker in the pay reference period shall be treated, for the purpose of paragraph (1), as being the maximum number set by the employer.

Rated output work; determining the mean hourly output

27. –(1) To determine the mean hourly output for a subject piece, the employer must –

- (a) conduct a satisfactory test, in accordance with paragraph (2), of the speed at which every worker in one of the groups specified in that paragraph produces the subject piece and divide the total number of subject pieces (or the fraction of a piece) produced in an hour by all of the workers by the number of workers tested, or
- (b) make a satisfactory estimate, in accordance with paragraph (3), of the average speed, in terms of pieces per hour, at which the workers producing the subject piece are likely to produce that piece.

(2) The permitted groups for the purposes of the test mentioned in paragraph (1)(a) are –

- (a) all his workers who produce the subject piece, or
- (b) a sample of those workers that, in respect of the speed at which the workers in the sample work, is representative of all those workers,

and a test is satisfactory only if all the workers in the group are tested in working circumstances similar to those in which the worker is or will be producing the subject piece.

(3) An estimate is only satisfactory for the purposes of paragraph (1)(b) if the employer has –

- (a) tested the average speed, in terms of pieces per hour, at which a sample of workers working in similar working circumstances to the worker produce a piece that is reasonably similar to the subject piece and, in making the estimate, has fairly adjusted that average speed to take account of the increased or decreased time that the production of the subject piece involves; or
- (b) tested the average speed, in terms of pieces per hour, at which a sample workers working in different working circumstances from the worker produce the subject piece and, in making the estimate, has fairly adjusted that average speed to take account of the increased or decreased time that production of the subject piece in the same working circumstances as the worker involves;

and if the sample of workers tested is, so far as reasonably practicable, representative, in respect of the speed at which they work, of the speed at which the workers who produce the subject piece work.

(4) Where the subject piece is a variation in the design of a subject piece in respect of which a satisfactory test has already been conducted or a satisfactory estimate has already been made, the employer, instead of conducting a further satisfactory test or making a further satisfactory estimate, may make an adjustment, where necessary, to the mean hourly output that fairly reflects the increased or decreased time taken, as a consequence of the variation, to produce one of the subject pieces.

(5) Where such a satisfactory test has been conducted or satisfactory estimate has been made, subsequent changes in the number or identity of the workers of the employer who produce the subject piece do not require the employer to conduct a further satisfactory test or make a further satisfactory estimate unless the employer has reason to believe that the changes materially affect the mean hourly output.

Deadline for responses

All responses to this paper must be sent to Mike O'Donnell at the address above by 23 January 2004.

A downloadable version of this consultation document (as well as the earlier consultation issued in February 2003) along with the Regulatory Impact Assessment is available by following the links at

<http://www.dti.gov.uk/er/nmw>

National Minimum Wage Acts and Regulations are available at

<http://www.dti.gov.uk/er/nmw/nmwlaw.htm>

Questions about this document or the minimum wage should be addressed to Mike O'Donnell. If there are any questions about consultation processes in general then please contact the DTI's Consultation Co-ordinator, Philip Martin, on 020 7215 6206, or email - philip.martin@dti.gsi.gov.uk

Code of Practice on written consultation

All UK national public consultations are required to conform to the following standards:

Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left at each stage.

It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.

Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.

Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.