

BERR

Department for Business
Enterprise & Regulatory Reform

NATIONAL MINIMUM WAGE GUIDE

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

Helpline 0845 6000 678
(open 9am to 5pm, Monday to Friday)

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1 Introduction

Aim of the guidance

This guide provides guidance on workers' rights and employers' obligations under the National Minimum Wage Act 1998 and the subsequent secondary legislation, the National Minimum Wage Regulations 1999. The regulations are generally updated each year to take account of changing national minimum wage rates and other developments. This guide aim is to help employers ensure that they pay their workers at least the national minimum wage, and to help workers establish whether they are getting what they are entitled to, and reflects the position as at July 2008.

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 national 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 national minimum wage. Chapter 17 explains what records employers need to keep. Chapter 18 looks at how the national minimum wage is enforced. Chapter 19 lists the most frequently asked questions about the national minimum wage and Chapter 20 gives contact details for further information.

The information contained in this guide 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 guide as concise as possible, we have used 'he' and 'his' to refer to both male and female workers and employers.

Further assistance may be obtained by telephoning the national minimum wage helpline (run by the HM Revenue & Customs (HMRC) 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

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

Check who must get the national minimum wage –
Chapter 2

Find out the rate of the national 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

Employers should note that:

- they are required by law to ensure that their workers are paid at least the national minimum wage;
- they need to keep records sufficient to prove that they are paying the national minimum wage to their workers, and such records may be copied if necessary. Separate records for national minimum wage are not required where the information is already held for a different purpose;

- they may be required by a national minimum wage compliance officer, by an employment tribunal or by a civil court to produce evidence that they have paid the national minimum wage;
- if they fail to produce records to a worker on request, the worker may complain to an employment tribunal which can impose a penalty;
- where a tribunal or civil court is making a decision on a national minimum wage case, the burden will always be on the employer to prove that the national minimum wage has been paid;
- where an employer has failed to pay the national minimum wage, he will be required to pay arrears to the worker;
- HMRC may issue a penalty against an employer for non-payment of the national minimum wage;
- an employer may be subject to criminal prosecution for refusing to pay the national minimum wage, obstructing compliance officers or not keeping proper records (see also paragraph on Criminal Offences). Fines for these offences currently can be up to £5,000¹.

It is against the law to dismiss a worker for reasons connected with the national minimum wage. If a worker is dismissed because he needs to be paid the national minimum wage or a higher rate of the national minimum wage, this will automatically be an unfair reason and the worker would be entitled to take a claim to an employment tribunal for unfair dismissal.

¹ It is anticipated that this will increase to a maximum of an unlimited fine by the end of 2008.

Things that workers need to know

Workers should note that:

- if they believe they are not getting the national minimum wage, they are entitled to see the records relating to their rate of pay which their employer must hold;
- if they want to complain that their employer has not paid the national minimum wage or has not allowed them to see their records, they can make a complaint to the national minimum wage helpline on 0845 6000 678, or take their case to an employment tribunal or county court independently;
- they are legally protected against being dismissed because they are entitled to the national minimum wage or because they have complained about non-payment.

An employer may not force or persuade any worker to agree to a wage below the national minimum wage. The law prevents workers from signing away their right to receive the national minimum wage.

2 Who must get the national minimum wage?

Workers

Most workers in the United Kingdom over compulsory school age are entitled to be paid at least the national 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, such as a contract to personally perform services) 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 homeworkers, agency workers, casual labourers, part-time workers and workers on short-term contracts are all entitled to the national minimum wage. It does not matter when or how a worker is paid – e.g. a worker may be paid by the month, week, day, session or hour and by cash, cheque, bank transfer or other method.

Agency workers

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 national minimum wage. The agency worker will be entitled to the national minimum wage and whoever pays him (generally the agency) will be responsible for paying the minimum wage.

Agricultural workers

Agricultural workers covered by agricultural wages legislation, are entitled to the agricultural minimum wage rather than the national 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 rate (see Chapter 15 on Agricultural workers and the National minimum wage).

Homeworkers

Homeworkers are entitled to the national minimum wage unless they are running their own business. If a homeworker is working for another person or company they are probably entitled to the national minimum wage, even if the supplier of the homework tells them that they are self-employed.

The national 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 national 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 national minimum wage for every hour they actually work; or
- pay a fair piece rate for every piece made or task performed (see Chapter 13: Hours for which the national minimum must be paid: output work).

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

Piece workers (also known as output workers)

Piece workers are paid by the number of items they produce or tasks they perform 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 for every hour they work or a fair piece rate for each piece produced or task performed. There are special rules for working this out (see Chapter 13: Hours which the national minimum wage must be paid: output work).

Commission workers

Some workers are paid entirely or partly on the basis of sales made or deals completed. These 'commission workers' must be paid at least the national minimum wage.

Workers with a disability

The entitlement to the national minimum wage applies to all workers. If a person with a disability is a worker then they must be paid at least the national 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 may not count as workers and, if not, will not be entitled to the national minimum wage.

Seafarers

Regardless of where their ship is registered, seafarers are covered by the national minimum wage legislation whilst employed to work on a ship working in the United Kingdom. The United Kingdom includes 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 who is ordinarily a United Kingdom resident must be paid at least the national minimum wage (wherever in the world that ship may be) unless all his work takes place outside the United Kingdom or he is not ordinarily resident in the UK.

Non United Kingdom resident seafarers do not need to be paid the national minimum wage when their ship is in external waters.

Offshore workers

Offshore workers must be paid at least the national minimum wage if they are working or ordinarily working in United Kingdom territorial waters, in the United Kingdom sector of the continental shelf or the foreign sector unless they are in the course of navigation or are working on a ship which is engaged in dredging or fishing. Offshore workers are entitled to the national minimum wage whether or not they or their employer are based in the United Kingdom itself.

Trainees and staff on probation

If someone is employed as a trainee or working a period of probation with their employer, they are entitled to be paid at least the national minimum wage. There are some exemptions for certain apprentices and workers on specified training courses. This is explained in Chapter 3: Who need not get the national minimum wage.

Workers from outside the United Kingdom

All workers who are working legally in the United Kingdom must be paid at least the national minimum wage for the hours they work in this country. Foreign workers working in the United Kingdom are entitled to the national 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.

It is important that employers and workers understand whether someone is legally entitled to work in the UK and the eligibility requirements. Information is available from www.ukba.homeoffice.gov.uk/workingintheuk/

Workers working outside the United Kingdom

Workers who usually work in the United Kingdom under their contract but who are working temporarily outside the United Kingdom must be paid at least the national minimum wage for their work done outside the United Kingdom.

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 national 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

The national 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 someone is 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.

Employers and individuals should not simply rely on a person's tax status, as someone who has been assessed as 'self-employed' by HM Revenue & Customs for tax purposes may not necessarily be self-employed for the purposes of the national minimum wage. If they are unsure they should contact the national 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 national 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

The national 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.

However, company directors who also have employment contracts will need to be paid the national minimum wage for work done under that contract. If a company director is unsure whether he has entered into an employment contract with his company he may wish to take independent legal advice.

Apprentices

Apprentices who are under the age of 19 are not entitled to the national minimum wage. Apprentices aged 19 and over who are in the first year of their apprenticeship are also not entitled to the national minimum wage.

Apprentices are entitled to the national minimum wage when they are aged 19 or over and have completed the first year of their apprenticeship.

Apprentices for national minimum wage purposes are either workers who have contracts of apprenticeship (see paragraph 'Contracts of apprenticeship' below); or workers who are taking part in specific training programmes (see paragraph on Training schemes to be treated like apprenticeships below).

Contracts of apprenticeship

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, there will be a written

contract which will 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

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 (but only where the arrangements are for the purpose of gaining a Scottish Vocational Qualification at Level 2 or 3 or a National Vocational Qualification at Level 2 or 3);
- in Northern Ireland – Jobskills Traineeships or Modern Apprenticeships;
- in Wales – Modern Apprenticeships or Foundation Modern Apprenticeships.

Participants 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 Learning and Skills Council (LSC) in England, ELWa (National Council for Education and Training) 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 0800 100 900 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 41919.

Some other participants on government-funded schemes

Participants on specified government schemes at pre-apprenticeship level are not entitled to the national minimum wage.

These schemes are:

- in England, Entry to Employment or Programme Led Apprenticeships;
- in Scotland, Get Ready for Work;
- in Northern Ireland, Access;
- in Wales, Skillbuild.

Some participants on programmes supported by the European Social Fund

The European Social Fund provides assistance to a wide range of governmental, regional and local training schemes. Participants taking part in schemes that receive funding from the European Social Fund need to be paid the national minimum wage if they have a contract of employment with their employer (unless they are engaged on a work trial with a prospective employer not exceeding six weeks).

Some participants in government employment programmes

People who are taking part in some government employment programmes intended to provide them with training, work experience or temporary work or to assist them in seeking or obtaining work are exempt from the national minimum wage.

Individuals taking part in some employment schemes, such as subsidised employment offered by the New Deal, are entitled to receive the national minimum wage. Participants in other schemes, including work trials of up to six weeks are exempt from the national minimum wage but will continue to receive government benefits.

Employers and participants should seek advice from those arranging the programme about whether the national minimum wage is due.

Some participants on certain European Community programmes

Participants on the European Community Leonardo da Vinci programme or Youth in Action programme do not qualify for the national minimum wage for work done for their employer as part of those schemes.

Students doing work experience as part of a higher or further education course

Work experience undertaken by students as part of United Kingdom based higher education courses or further education courses is exempt from the national minimum wage, where the work experience placement does not exceed one year.

Students who undertake work outside of any work experience undertaken as part of their course are entitled to be paid the national minimum wage for that work. Similarly, students above compulsory school leaving age undertaking gap year work are entitled to the national minimum wage when working in the United Kingdom.

Some students may undertake work experience which is not part of their course. If the student is a worker during that work experience, they are entitled to the national minimum wage unless a specific exemption applied.

People living and working within the family

People who live in the family home of their employer (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 national minimum wage for work done relating to the employer's family household. For this to apply, the worker must be treated as part of the family in respect of the provision of accommodation and meals and the sharing of tasks and leisure activities. They must not be charged for the provision of accommodation or meals.

The national minimum wage does not need to be paid to members of the employer's family providing they are living at home, and help out with household chores, provided the worker shares in the tasks and activities of the family. 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, live in the employer's home and share in the tasks and activities of the family.

Friends and neighbours

The national minimum wage does not need to be paid when jobs are done under informal arrangements between people where no contractual obligation is formed. 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 national minimum wage unless there is a binding worker's contract. Similarly, someone who cleans a neighbour's car on this basis cannot claim the national minimum wage.

Members of the armed forces

The national minimum wage does not apply to members of the armed forces, including reservists. This does not affect reservists' entitlement to the minimum wage outside of their reservists'

activity. Civilians who are working for an association of reservists, or civilians working for the Ministry of Defence must be paid at least the national minimum wage.

Share fishermen

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 national minimum wage does not apply to share fishermen.

Prisoners

A prisoner working under prison rules is not entitled to be paid the national minimum wage. A person detained under immigration legislation doing work in a removal centre under their rules is not entitled to be paid the national minimum wage.

Voluntary workers

Voluntary workers are a type of worker who have a specific exemption from qualifying for the national minimum wage. Voluntary workers must work for a charity, voluntary organisation, associated fund raising body such as a charity shop or a statutory body such as a school or hospital.

Voluntary workers may not receive any monetary payment apart from the reimbursement of expenses incurred or reasonably estimated to have been incurred in the performance of duties. Organisations should always be able to demonstrate how they have arrived at the level of estimated expenses reimbursed. Voluntary workers may receive such subsistence and accommodation (as is reasonable in the circumstances of the employment), training which is necessary to perform the duties or to improve the voluntary workers' ability to perform their duties, or training which is necessarily acquired in the course of the role.

A voluntary worker may only receive monetary payment for subsistence where they are engaged as a result of arrangements made between a charity acting in pursuance of its charitable objectives and another charity, voluntary organisation, associated fund raising body or statutory body.

Volunteers

Volunteers do not qualify for the national minimum wage. Volunteers must be under no contractual obligation to perform work or to personally provide services. Volunteers can volunteer for anybody, not just organisations in the voluntary sector.

Some people who think they are volunteers could still be workers if the arrangements that they work on amount to a contractual relationship. In these cases, the individuals would qualify for the minimum wage unless a specific exemption, such as the voluntary worker exemption, applied.

Religious and other communities

A residential member of a community does not qualify for the national 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?

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. Even if you do not have a written contract of employment, you may be a worker if you are performing work personally for someone else – the contract may be implied.

The situation may be less clear for workers supplied by an agency. Temporary workers supplied by an agency may not have a contract with the person for whom they are working. However, most agency workers are regarded as workers for national minimum wage purposes and their employer is defined as whoever is responsible for paying them. In the case of agency workers this will normally be the agency. If neither the agency nor the client accepts responsibility, whoever actually pays the worker will be regarded as the employer for national minimum wage purposes.

Sometimes a worker is employed by a second worker on the premises of the second worker's employer. In these circumstances, both the second worker and his employer will be regarded as the first worker's employer.

5 The national minimum wage rate

The national minimum wage rate changes each year on 1 October. The rates for 2007 and 2008 are set out below. Information about subsequent changes will be available from BERR's website at: www.berr.gov.uk/employment/pay/index.html, and Directgov www.direct.gov.uk/nmw and Business Link www.businesslink.gov.uk/employingpeople and from the national minimum wage helpline on 0845 6000 678. Information on previous rates is also available from the helpline.

	Hourly rate for pay reference periods starting on or after 1 October 2007	Proposed hourly rate for pay reference periods starting on or after 1 October 2008
Workers aged 22 and over (the main rate)	£5.52	£5.73
Workers aged 18-21 (the development rate)	£4.60	£4.77
Workers aged 16-17 (who are above school leaving age)	£3.40	£3.53
Accommodation offset rate	£4.30 (per day) (Weekly maximum – £30.10)	£4.46 (per day) (Weekly maximum – £31.22)

When and how the rates apply

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

Employers and workers need to know when the different rates apply. For example, at age 21 a worker is entitled to the development rate. From the first pay reference period (see Chapter 6: The pay reference period) starting on or after 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. Since the rates are age related employers may need to ask workers to provide proof of their age.

6 The pay reference period

What is the pay reference period for?

The pay reference period is the period by reference to which a worker is paid and is the basis of calculating whether the national minimum wage has been paid. The worker does not have to be paid the national minimum wage for each hour worked, but in general must be paid the national minimum wage on average for the time worked in the pay reference period. However, there are special rules which must be applied depending on the type of work being performed (see Chapter 10: Hours for which the national minimum wage must be paid: the four different types of work).

How long is the pay reference period?

The pay reference period is usually the period of time for which a worker's wage is actually paid. 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 national 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 national minimum wage during each calendar month in that quarter 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?

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 national minimum wage has been paid, provided it is received in the next pay reference period. It should be noted that payment delayed by more than one pay reference period cannot usually be referred back to the period it was earned in but simply counts in the period it is paid.

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 national minimum wage for the current pay reference period until the end of the next pay reference period. 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.

Pay reference period and commission earnings

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	£230.00	£200.00	£250.00	£200.00
If averaged weekly, the hourly rate would be	£6.05	£5.26	£6.58	£5.26

To calculate whether national minimum wage has been paid in respect of the pay reference period:

$$(\pounds230+\pounds200+\pounds250+\pounds200)\div(38\text{ hours}\times4)$$

$$= \pounds880\div152\text{ hours}$$

$$= \text{average of } \pounds5.79 \text{ per hour}$$

Although in certain weeks the average hourly rate was below the minimum wage, over the four-week pay reference period, the shop worker has been paid an average of £5.79 an hour – which is above the main national minimum wage rate of £5.52 an hour (October 2007 rate).

In the example below, the worker is paid £5.52 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. The sum of these overtime payments can be included in the calculation of national 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 national minimum wage pay (see Chapter 8 section on: Overtime and shift premia).

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 for basic 38 hours	$£5.52 \times 38 = £209.76$	$£5.52 \times 38 = £209.76$	$£5.52 \times 38 = £209.76$
Payment for additional hours	None	$£5.52 \times 6 = £33.12$	$£5.52 \times 3 = £16.56$
C: National minimum wage pay calculation	$£209.76 + £33.12 = £242.88$	$£209.76 + £16.56 = £226.32$	$£209.76 + £11.04 = £220.80$
D: Hourly rate for minimum wage purposes	$£242.88/44 = £5.52$	$£226.32/41 = £5.52$	$£220.80/40 = £5.52$

In the example below, 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 national 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 national minimum wage pay in that period, even if it is not paid until the following pay reference period.

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			
Pay for 38 basic hours	£4.00 x 38 = £152.00	£4.00 x 38 = £152.00	£4.00 x 38 = £152.00
Commission payment	None	£30	£58
Total pay received in period	£152	£182	£210
D: National minimum wage pay calculation	£152 + £30 = £182	£182 + £58 = £210	£152 + £10 = £162
E: Hourly rate	£182/38 = £4.79	£210/38 = £5.53	£162/38 = £4.26
Does not comply with the national minimum wage			

Allocating annual bonuses

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 national minimum wage pay in November. The rest of the bonus will count towards national minimum wage pay in December.

Allocating an annual bonus to a pay reference period

A worker is paid £875 for 152 hours work per month. He receives a bonus payment in December of £500 for work performance in the 12 months ending on 31 December.

Calculation for January – October:

Monthly payment of £875

Therefore the hourly national minimum wage pay in each of January – October is $\text{£875 monthly payment} \div \text{monthly working time of 152 hours} = \text{£5.76}$

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

Calculation for November:

Monthly payment of £875

Amount of bonus to be taken into account is the proportion which relates to the particular month: $\text{£500} \div 12 = \text{£41.67}$

Total national minimum wage payment for November is: $\text{£875} + \text{£41.67} = \text{£916.67}$

Therefore, the hourly national minimum wage pay is that month's payment of $\text{£916.67} \div \text{monthly working time of 152 hours} = \text{£6.03}$

Calculation for December:

Monthly payment of £875

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

November: $\text{£500} - \text{£41.67} = \text{£458.33}$

Total national minimum wage payment for December is:

$\text{£875} + \text{£458.33} = \text{£1,333.33}$

Therefore, the hourly national minimum wage pay is that month's payment of $\text{£1,333.33} \div \text{monthly working time of 152 hours} = \text{£8.77}$

Allocating pay based on timesheets

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 certain circumstances.

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 national minimum wage in the period in which it was paid provided it is paid in the period the work is performed or the next immediate pay reference period. 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 pay reference period during which the work is performed or the next one.

Special rules apply if the timesheet is received late. If the worker hands in the timesheet later than four working days before the end of the pay reference period following the one when the work was done, the payment for that time counts towards national minimum wage pay for the pay reference period when it was earned provided the employer makes the payment during the pay reference period in which the timesheet was submitted or the next one. If the employer pays the worker after this, the payment counts in the pay reference period in which it is paid.

Allocating pay based on timesheets

A worker is paid weekly based on timesheets recording hours worked, at £5.52 an hour. He sends in the timesheet promptly in the week after the work was 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 national minimum wage pay for week 3, even though the payment for this week was received in week 5 and nothing was paid in week 4.

	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)
Payment received		£110.40 on 14 April (week 1)	£110.40 on 20 April (week 2)	Nil	£110.40 on 3 May (week 3) £110.40 on 5 May (week 4)
Counts towards minimum wage in	£110.40 week 1	£110.40 week 2	£110.40 week 3	£110.40 week 4	

7 What counts as national minimum wage pay?

The make-up of national minimum wage pay

To see whether a worker's pay is in line with the national minimum wage, it must be calculated in a particular way. Various specific components of a worker's pay count towards national minimum wage pay. Other components must be excluded.

This chapter explains what counts towards national 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 extra premium for overtime – could result in the national minimum wage appearing to be paid when it is not.

How to calculate national minimum wage pay

The starting-point is total pay, that is, the pay received by the worker before deducting tax and National Insurance contributions. Total pay, for the minimum wage, excludes any of the payments in the box below:

Excluded payments

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

These and other payments excluded from national minimum wage pay are explained in more detail in this Chapter.

The basic calculation for each pay reference period is as outlined below:

Basic calculation of national minimum wage pay

Total pay minus payments and deductions which do not count (see Chapter 8: What does not count as national minimum wage pay?) equals national minimum wage pay.

Particular elements of pay that count

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 national minimum wage pay. These are explained in the following paragraphs.

Incentive pay

Payments solely related to the performance of a worker made as part of an incentive, sales commission, merit or any performance-related pay scheme count towards national minimum wage pay.

Bonuses

Bonus payments count towards national minimum wage pay. Chapter 6: Allocating Annual bonuses explains how bonuses should be allocated to the pay reference period.

Tips paid through the payroll

Only tips, gratuities, service charges or cover charges which are paid by the employer to the worker through the employer's payroll count towards the national minimum wage. Tips given directly to the worker by a customer do not count towards national minimum wage pay.

Tronc payments made directly to the worker from the tronc master do not count towards national minimum wage pay.

Particular deductions from pay or payments by the worker that are ignored.

Deduction of income tax and National Insurance contributions

National minimum wage is calculated on gross pay before income tax and National Insurance contributions are deducted. Deductions for income tax and National Insurance contributions do not reduce national minimum wage pay.

Deduction from pay or payment by the worker of a penalty

If an employer deducts a sum from the worker's pay because of some event related to misconduct, where the employer is permitted to make the deduction under the terms of the worker's contract, the amount does not reduce national minimum wage pay.

Deduction from pay or payment by the worker of an advance of wages

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 does not reduce national minimum wage pay in the pay reference period in which it is made.

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 national minimum wage pay, the advance is treated as follows:

	November	December
Money received:	£1000 standard + £500 in advance Total : £1500	£1000 standard – £500 deduction for advance Total: £500
Amount that counts towards national minimum wage pay	£1500 – £500 = £1000	£1000 (The £500 deduction is ignored as it was the advance already paid in November)

Deduction from pay or payment from the worker for purchase of shares or securities by the worker

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 does not reduce the worker's national minimum wage pay.

Deduction from pay or payment from the worker to recover an accidental overpayment of wages

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 does not reduce national minimum wage pay.

Deductions from pay that are not for expenditure connected to the worker's employment nor for the employer's own use or benefit

A worker may want to have other sums deducted automatically from his pay, for example, his own union subscription or pension contribution. Such deductions from wages do not reduce national minimum wage pay, so long as they are not required expenditure in connection with the worker's employment nor 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).

Any deductions that an employer makes for his own use or benefit, for example, a deduction for meals or transport the employer is providing, cannot be counted towards national minimum wage pay.

Payments from the worker that are for the purchase of goods and services from the employer

A worker can make a payment voluntarily for the purchase of goods and services from the employer without the amount reducing the calculation of national minimum wage pay.

For example, if a worker receives his wages and then pays the employer for the cost of meals purchased in the staff canteen the amount paid will not reduce the calculation of national minimum wage pay.

Accommodation

If an employer provides accommodation to a worker, he may: provide the accommodation free; deduct an amount of rent from the worker's pay, or; charge the worker rent for the accommodation. Special rules apply in these circumstances which are explained in Chapter 9: Benefits in kind and accommodation.

Summary of what counts towards national minimum wage pay

Amounts paid by the employer excluding items in box 'some excluded payments' but including:

- Performance-related incentive pay;
- Bonuses;
- Payments by an employer of tips, gratuities, service charges or cover charges and which are paid to the worker through the employer's payroll;
- Accommodation offset as explained in Chapter 9.

Further information on the accommodation offset is available at www.berr.gov.uk/files/file38769.pdf

8 What does not count as national minimum wage pay?

Payments excluded from national minimum wage pay

For convenience, the example 'Basic calculation of national minimum wage pay' used in Chapter 7 to show payments that do not count as national minimum wage pay is reproduced below.

Payments excluded from national minimum wage 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

In addition to the payments indicated above, there are other elements of a worker's pay that do not count towards national minimum wage pay. They must all therefore be subtracted from total pay in order to calculate if the worker is receiving the minimum wage. These are described below.

Overtime and shift premia

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 national minimum wage pay.

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 national minimum wage pay.

Example

A worker works a basic 20 daytime hours at £5.52 an hour. He works an additional 5 hours at night from Monday to Friday which is paid at a premium rate of £6.00 an hour. He works 4 hours overtime on Saturday which is paid at a premium rate of £7.80 an hour.

Amount to be subtracted from total pay:

- 5 hours night work during the week at premium rate of £6.00: $(£6.00 - £5.52) \times 5 = £2.40$ premium element;
- 4 hours overtime on Saturday at premium rate of £7.80: $(£7.80 - £5.52) \times 4 = £9.12$ premium element

*£5.52 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 $£2.40 + £9.12 = £11.52$. Therefore, £11.52 is subtracted from total pay in order to calculate national minimum wage pay.

However, if the worker is paid different basic rates for different jobs or duties, rather than premium rates for the same job (i.e. an overtime or shift premium), then the whole of each rate can be

included in the calculation of national minimum wage pay. For example, a worker works part of the day doing semi-skilled work on a machine and is paid £7.00 an hour, but helps clean the factory for another part of the day and is paid £6.00 an hour. There is no premium to subtract in this case.

Treatment of overtime premium

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

A worker works 40 hours a week and is paid £212.00 basic pay (equivalent to £5.30 an hour), but also works 8 hours overtime paid at £7.00 an hour. Total pay for the week is therefore:

Basic pay:		£212.00
Overtime	8 x £7.00	£56.00
Total		£268.00

The worker worked 48 hours in the week so the hourly amount of pay received was $£268.00 \div 48 = £5.58$. This is above the £5.52 national minimum wage, so the employer might think that he complies with the national minimum wage. However, the premium element of the overtime cannot count towards the national minimum wage. The national minimum wage calculation should be:

Basic pay:		£212.00
Overtime	8 x £7.00 =	£56.00
Total =		£268.00

Minus overtime premium 8 x £1.70 = £13.60
National minimum wage pays £254.40

The worker's hourly rate for comparison with the national minimum wage is therefore: $£254.40 \div 48 = £5.30$.

This does not comply with the national minimum wage and the employer will have to pay the difference between £264.96 (£5.52x48 hours) and £254.40 = £10.56.

Allowances

Special allowances over and above standard pay are sometimes paid by an employer to a worker for all kinds of things such as: 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 national minimum wage pay unless they are consolidated into standard pay or they are related to the worker's performance.

Expenses and refunds of money spent on work

If a worker spends money on something connected with his employment and is not repaid by the employer then that amount will reduce his national minimum wage pay.

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 national minimum wage pay. In these circumstances, the refund is a reimbursement of the payment made by the worker and there is no overall effect on national minimum wage pay. This applies, for example, when a worker pays for and the 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 or payments from the worker that do not count

Deductions made by the employer which do not count towards national minimum wage pay are dealt with below.

Deductions or payments from the worker for expenditure connected with the job

Deductions which an employer makes from a workers pay, and payments made by the worker, to cover the cost of items or expenses that are necessary for the worker's job reduces national 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 national minimum wage pay. If the worker has to buy tools, equipment, uniform or other items from this employer in order to do his job, the amount paid reduces national minimum wage pay.

Deductions for the employer's own use or benefit

If the employer makes any deduction from the worker's pay which is for the employer's own use or benefit (for example, a deduction for meals provided by the employer), the amount deducted will not count towards national minimum wage pay. It does not matter whether the worker agrees to the deduction or not.

Payments to another person for expenditure connected with the job

If the worker has to make payments to another person which are connected with the job, such as to buy tools, equipment, uniform or on the job travel costs and he is not reimbursed for these costs by his employer, this reduces the national minimum wage pay as the payments he makes have to be taken away from the amount that counts towards the national minimum wage.

Accommodation

If an employer provides accommodation to a worker there may be an effect on national minimum wage pay. Chapter 9: Benefits in

kind and accommodation and the BERR website at www.berr.gov.uk/files/file38769.pdf explain this in more detail.

Summary of what does not count as national minimum wage pay

- items in Box: Payments excluded from national minimum wage pay, plus;
- overtime and shift premia;
- allowances that are not consolidated into pay;
- expenses and refunds of money spent on work;
- deduction or payment for tools, uniform, etc;
- deduction for the employer's own use or benefit;
- payments by the worker to another person connected with the job which are not reimbursed by the employer;
- rent over and above the accommodation offset as explained in Chapter 9.

9 Benefits in kind and accommodation

Treatment of benefits in kind

Benefits in kind do not count towards national minimum wage pay. 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 national minimum wage pay.

Example of benefits in kind that do not count:

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

Only accommodation provided to the worker by the employer can be counted towards national minimum wage pay.

Meals

Meals do not count towards national minimum wage pay and an employer cannot offer meals as part of a package that makes up national minimum wage pay.

Accommodation

Sometimes, an employer may deduct rent for accommodation from the worker's pay; or he may charge a specific amount once the worker has received his pay. An employer may charge any amount of rent for accommodation, but any rent charged above the accommodation offset rate will reduce national minimum wage pay.

Other employers may simply provide accommodation on an uncharged basis as part of a package. In all these cases, the rules allow a notional amount called the accommodation offset to count towards national minimum wage pay. The rates are set and can be found at the back of this guide.

Any rent the worker is obliged to pay as a condition of being provided with accommodation (including charges for gas, electricity, laundry and provision of furniture) must be regarded as a charge paid in respect of the provision of accommodation. Such charges should be taken into account when determining the total charge for accommodation, and when calculating the national minimum wage under the accommodation offset rules. 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 rent for accommodation.

- The accommodation offset provisions will apply whenever an employer provides accommodation to a worker.
- The employer will be considered as providing accommodation in the following circumstances whether or not the accommodation is provided 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 workers occupation of accommodation is dependent on remaining in a particular job.

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.

Further details on the accommodation offset rules can be found at: www.berr.gov.uk/files/file38769.pdf

How to calculate the accommodation offset

There is a limit on the rent amount that an employer providing accommodation can count towards national minimum wage pay. This is called the accommodation offset.

The daily accommodation offset is calculated at a daily rate of £4.30 from 1 October 2007 (£4.46 from 1 October 2008) for each day that the employer makes the accommodation available. (Information about subsequent changes is available from BERR's website at: www.berr.gov.uk/employment/pay/index.html and Directgov www.direct.gov.uk/nmw and Business Link www.businesslink.gov.uk/employingpeople)

It will be clear from the above that the maximum permitted weekly offset is 7 x the daily rate of £4.30 i.e. £30.10 from 1 October 2007.

An employer may charge or deduct any rent for accommodation. However, any rent in excess of the worker's accommodation offset will reduce national minimum wage pay.

How the offset affects national minimum wage pay

A worker is paid £6.50 an hour for a 28 hour week and rent of £45 a week is deducted for employer provided accommodation which is available 6 days a week.

Weekly pay $£6.50 \times 28 = £182.00$

Minus rent charged: £45.00

Total pay received £137.00

To see whether the national minimum wage has been paid:

Start with weekly pay:

£182.00 Identify the applicable offset: $£4.30 \times 6 = £25.80$

Subtract the offset from rent charged: $£45 - £25.80 = £19.20$

Total pay for national minimum wage =

$£182.00 - £19.20 = £162.80$.

Divide national minimum wage pay by hours:

$£162.80 \div 28 = £5.81$ an hour

Accommodation offset and workers living in social housing

Where a worker is working for a social housing provider and lives in accommodation provided by his employer but there is no connection between the worker's employment and the fact that he is a tenant of his employer (either a local authority or a registered social landlord), the accommodation offset does not apply. Where there is a connection between the work and the provision of the accommodation, for example where someone is a care warden and must live on site, the accommodation offset will continue to apply.

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

Hours for which the national minimum wage must be paid

The hours for which the national minimum wage must be paid depends on the type of work that the worker is doing.

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.

The type of work does not depend on the worker's occupation. Instead, it depends on the basis on which he is paid.

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.

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.

Where this guidance refers to 'time worker', 'piece worker', 'salaried hour's worker' etc, it means a person who is doing that particular type of work in a pay reference period.

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

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

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.

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.

The time work rules also apply when a person doing piece work (see Chapter 13: Hours for which the national minimum wage must be paid: output work) is expected to work for a set number of hours per day.

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.

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 national minimum wage for that time.

Whatever the level of the piece rate, the workers are time workers and must receive at least the national minimum wage, for each hour in the pay reference period.

Calculation of national 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 £2.10 per garment. Normally, he can produce 3 items an hour and earn £6.30.

However, for the first hour each day, his production is not up to normal speed. He produces only 2 garments and earns £4.20 an hour: £1.32 less than the national minimum wage.

The employer is not required to pay him/her an extra £1.32 for that hour, provided that the worker's weekly earnings, when averaged over the weekly working hours, are at least £5.52 an hour.

Earnings: 35 hours at £6.30 (3 garments an hour) = £220.50
5 hours at £4.20 (2 garments an hour) = £21.00
Total = £241.50

Average hourly rate: £241.50 divided by 40 working hours = £6.04. Earnings comply with the national minimum wage.

What hours of work count for time workers?

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 national minimum wage pay. The times when a time 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 national minimum wage purposes, the length of the rest breaks (and any payment for those breaks) are ignored.

Time spent at or near the workplace

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

- he is at work and required to be at work (subject to the rules for time workers and rest breaks (see section on rest Breaks below). Workers who turn up to work as required and who are available for work must be paid the national 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 his place of work. If he is required to be available for work but is waiting to be given work, the national minimum wage is payable for that time. However, if there are arrangements in place for him to sleep at or near the place of work, and he is provided with suitable facilities for sleeping, then he is only entitled to the national minimum wage when he is awake and required to work;
 - a worker who is on standby or on-call at his home which is at or near his place of work, who is entitled to be at home and who is waiting for work (as opposed to working), does not have to be paid the national minimum wage for that time.

Time spent at or near the workplace

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 national minimum wage for this time, even though he cannot do any work.

A chauffeur is at the office of his employer waiting to start a journey. He would need to be paid the national minimum wage for this 'on-call' time.

A factory worker is told to wait at a factory for when work is available. He would need to be paid the national minimum wage for this 'on-call' time.

A worker is 'on-call' at home waiting to be called into work to do some urgent work over the weekend. He does not have to be paid the national minimum wage for the time when he is 'on-call' at home – 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

There are some periods of travelling time when the national minimum wage must be paid to a time worker. These include time when the 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 national minimum wage is payable;

- 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 national 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 national 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 national minimum wage should be paid. But travel between home and the place of training does not count.

Travel time on business

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 national minimum wage calculation purposes.

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 national minimum wage calculation purposes.

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 must be treated as time worked for national minimum wage calculation purposes.

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 national 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 national minimum wage for the time spent travelling from his second appointment to his home; or from his home to his third appointment.

If the care worker in the above example travels direct to the noon appointment from his second appointment and takes a rest break on the way, the period when he was travelling must be treated as time worked for national minimum wage calculation purposes but the rest break and any payment for that rest break can be excluded.

Training time

A worker must be paid the national minimum wage for time spent training in connection with the employment at or away from the place of work.

For example, where someone is new to the team and needs to undergo training to familiarise themselves with certain aspects such as health and safety or IT, the worker is entitled to national minimum wage for this time. Similarly where workers are required to attend evening training or late night openings, they are entitled to the national minimum wage for this period.

What hours do not count for time workers?

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

Travelling between home and work

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

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 national 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 national minimum wage for this additional travelling time.

Absences from work

For time workers, absences from work, and any pay received for those absences, are ignored when calculating national minimum wage pay. Particular absences are discussed in section: Rest breaks and Holidays, sick leave, maternity leave below.

Rest breaks

The national 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. If a worker is required to work at that time, then it would not count as a rest break and national minimum wage should be paid for this time.

Holidays, sick leave, maternity leave

The national minimum wage does not need to be paid for periods when the time worker is on holiday, sick or on maternity leave. 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 national minimum wage pay of time workers.

Industrial action

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 national 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 national minimum wage pay.

Sleeping between duties

If a worker arranges with his employer to sleep at or near 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 national 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 national minimum wage is payable.

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 national minimum wage in respect of that period if he is not actually working. He must, however, be paid the national minimum wage in respect of any time during the period when he is awake for the purposes of working. In cases where the employment contract does not clearly specify any sleeping time, the tribunals seem likely to conclude that the national minimum wage should be paid for the full time when the worker is at work. However, the case law in this area, and in the area of sleeping time for the purpose of the Working Time Regulations, is still evolving. Employers who are unsure how the law may apply to arrangements they have made in respect of particular workers may wish to seek independent legal advice.

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 national minimum wage, but the national 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 national 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 national minimum wage for that hour.

Summary of time-work hours that count

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

Time work hours that count

The following hours of time work count:

- time spent at work or on standby 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 national minimum wage must be paid: salaried-hours work

What is salaried-hours work?

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

Salaried-hours work is where a worker:

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

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?

Salaried-hours work could exist in any sector or occupation. Many office workers, public-sector workers and workers with large companies are paid on the basis of an annual salary.

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?

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 section: Time spent at or near the workplace);
- he is on standby or on-call at or near the place of work (see section: Time spent at or near the workplace);
- he is kept at his place of work but cannot work because of machine breakdown (see section: Time spent at or near the workplace);
- he is travelling on business during normal working hours (see section: Travelling time on business)
- he is training or travelling to training during normal working hours (see section: Training time).

Unlike time workers, hours of absence are counted as hours worked for a salaried-hours worker if the worker is paid his normal salary when he is absent. Absences such as rest breaks, lunch breaks, holidays, sick absence or maternity leave are counted towards time when the national 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 can be taken into account when calculating national minimum wage pay.

What hours do not count for salaried-hours workers?

The only hours that do not count as time when a salaried-hours worker should be paid the national minimum wage are described below.

Periods paid at less than normal pay

When a worker is away, for example, on a sick absence, his salary may drop to a proportion of his normal salary, statutory sick pay 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 national minimum wage is payable in the pay reference period.

Long-term sick leave

A worker is paid his full hourly pay of £5.75 an hour for the first six weeks of any sick absence. After this period the employer pays only half-pay of £2.88 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 national minimum wage pay of the salaried-hours worker and the payment is also ignored.

Other absences

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 national minimum wage is payable in the pay reference period.

Industrial action

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 national 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 national minimum wage pay in the pay reference period.

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

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 contract must specify that the worker is entitled to an annual salary, although 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.

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

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.

Calculating the salaried hours in a pay reference period

For a pay reference period of a week:

Divide the basic yearly hours by 52:

$$2080/52 = 40 \text{ hours a week.}$$

For a pay reference period of a month:

Divide the basic yearly hours by 12:

$$2080/12 = 173.3 \text{ hours a month.}$$

For a pay reference period which is neither a week nor a month, e.g. 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.

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

$$7.67\% \text{ of basic salaried hours} = 2080 \times 7.67\% = 159.5 \text{ salaried hours in 28 days.}$$

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

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 £11,940 basic pay a year. He is paid regular monthly instalments of £995. He must work 2,080 hours in the year (40 hours a week including breaks).

Identify annual hours: 2,080

Identify hours in each pay reference period:

$$2,080 \div 12 = 173.3 \text{ hours}$$

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:

$$\text{Divide monthly pay } \pounds 995 \text{ by } 173.3 \text{ hours} = \pounds 5.74 \text{ an hour.}$$

2. A worker is employed as a school cleaner during term-time only. He is paid £8,060 basic pay a year which is paid in regular weekly instalments of £155. He must work 1,400 hours in the year which he undertakes during term time, 35 weeks of the year for 40 hours.

He gets paid a regular £155 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:

$$\text{Divide weekly pay } \pounds 155 \text{ by } 26.9 \text{ hours} = \pounds 5.76 \text{ an hour.}$$

Possible pattern of pay and hours for a salaried hour's 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 £5.52 per hour = £552 per month.

Month	Salaried hours	Hours worked	Pay received (@October 2007 pay rate)	Hourly minimum wage
January	100	120	552	5.52
February	100	160	552	5.52
March	100	160	552	5.52
April	100	Nil	552	5.52
May	100	180	552	5.52
June	100	160	552	5.52
July	100	20	552	5.52
August	100	Nil	552	5.52
September	100	80	552	5.52
October	100	160	552	5.52
November	100	100	552	5.52
December	100	60	552	5.52
Totals	1200	1200	552	5.52

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

Sometimes, a worker may work all his basic hours under his annual contract before the end of the contractual year and then work extra hours. When this happens, the national 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 at least national minimum wage rates for the extra hours (for example, because they are treated as overtime), these hours are treated as paid and there is no need to do a special calculation.

Example

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

Once a salaried-hours worker has worked for more than the basic annual hours, he must be paid the national 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.

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 national minimum wage.

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.

Hours when the worker was engaged in industrial action must be excluded.

The following table shows the pattern of pay and hours when a worker does more than the basic annual hours in his contract.

Possible pattern of pay and hours for a salaried hour's 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 £11,260.80 per annum (£938.40 per month).

Month	Basic hours	Actual hours worked (extra)	Actual hours worked (cumulative)	Pay received	National minimum wage pay per hour
April	170	190 (20)	190	938.40	5.52
May	170	180 (10)	370	938.40	5.52
June	170	200 (30)	570	938.40	5.52
July	170	190 (20)	760	938.40	5.52
August	170	200 (30)	960	938.40	5.52
September	170	190 (20)	1,150	938.40	5.52
October	170	200 (30)	1,350	938.40	5.52
November	170	190 (20)	1,540	938.40	5.52
December	170	190 (20)	1,730	938.40	5.52
January	170	200 (30)	1,930	938.40	5.52
February	170	180 (10)	2,290	938.40	See box 'Calculating hours that count in the pay reference period when the basic hours are exceeded'
March	170	180 (10)	2,290*	938.40	See box 'Calculating hours that count in the pay reference period when the basic hours are exceeded'
Total	2,040	2290 (250)	2,290*	—	

In this example (Box above), 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 £938.40 per month which was the basis of the original contract, but in addition he needs to be paid at least the national minimum wage rate for the additional hours worked over and above the contracted hours. Box below sets out the relevant calculations.

Calculating hours that count in the pay reference period when the basic hours are exceeded For a pay reference period of a week:

Identify the day when the basic hours are exceeded (assume 15 February in a non-leap year e.g. 28 days total).

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 (2,040)
- $3.84\% \text{ of } 2,040 = 78.34 \text{ hours}$

NB: Any hours taken as unpaid leave should be deducted at this stage.

For the 14 days after the basic hours were exceeded calculate the hours in the same way which again gives 78.34 hours

Identify the actual hours worked from 14 to 28 February which may be, say, 10 days x 7 hours = 70 hours

NB: Deductions for unpaid leave cannot be made in this part of the calculation.

Add together these three sets of hours $78.34 + 78.34 + 70 = 226.68$ hours

This is the total number of hours for which the worker must be paid for February. Therefore February pay must not be less than $= 226.68 \times \text{£}5.52 = \text{£}1,251.27$

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 $\text{£}938.40$ per month which was the basis of the original contract, but in addition needs to be paid at least the national minimum wage rate for the additional hours worked over and above the contracted hours. Box below demonstrates this.

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

Add the money already owed for the period as per the contract $\text{£}938.40$ to the money owed for the 180 hours worked in the period $\text{£}5.52 \times 180 = \text{£}993.60$

Making a total of $\text{£}1,932.10$.

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

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.

The calculations depend on whether the worker is paid monthly or weekly. Box below sets out the details.

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 calculation 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 calculation year will be 15 May to 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 calculation 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

Boxes 'Possible pattern of pay and hours for a salaried-hour's worker who *does not* work more than the basic annual hours' and 'Possible pattern of pay and hours for a salaried-hours worker *who works* more than the basic annual hours specified in his contract' assume that the worker's contractual 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.

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.

Identifying basic hours before a contract is changed

An annual contract of 2,040 hours 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.

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:

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.

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.

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.

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

Divide them by 365 and multiply by the new contract hours (1,800): $(59 \div 365) \times 1,800 = 291$ hours

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

Divide them by 365 and multiply by the contract hours for that period (1,900): $(92 \div 365) \times 1,900 = 479$ hours.

Work out how many days there were from the start of the contract year to the day before the contract was first changed: $365 - 59 - 92 = 214$

Divide them by 365 and multiply by the previous contract hours (2,040): $(214 \div 365) \times 2,040 = 1,196$ hours

The basic hours at this point are: $291 + 479 + 1,196 = 1,966$ hours

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?

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 $1,020 + 180$).

To calculate whether excess hours have been worked (for national minimum wage purposes) when a worker leaves, see box below.

Calculating excess hours when a worker leaves (after 6 months)

Take actual hours worked since the beginning of the contract year (which, taking the example of the worker in Box 'Possible pattern of pay and hours for a salaried hours worker who works more than the basic annual hours' specified in his contract, would be 1,150 hours). Take the basic contract hours since the beginning of the contract year (which, staying with the example of the worker in Box mentioned above, would be $170 \times 6 = 1,020$).

Worker's excess hours therefore = $1,150 - 1,020 = 130$ hours.

The hours for which the national minimum wage is payable in the worker's final pay packet is therefore $170 + 130 = 300$ hours.

The worker's final pay packet should therefore not be less than $£5.52 \times 300 = £1,656$

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 the section above 'Possible pattern of pay and hours for a salaried hour's worker who works more than the basic annual hours specified in his contract' left at the end of February, he would have to be paid the extra hours worked up until then.

Sleeping between duties

As with time work, if a salaried-hours 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 national 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 national minimum wage is payable.

As Chapter 11 indicates in relation to time work and sleeping between duties, case law in this area is still evolving. If you have a question on this we suggest you should take independent legal advice.

Some general points to bear in mind

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

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

paid the national minimum wage for these hours in each pay reference period;

- 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 (often referred to as piece work)?

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

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' or 'fair piece rates'.

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.

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?

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

Fair piece rates

On 1 October 2004 the previous system of 'fair estimate' agreements for output workers was replaced by a new system known as "rated output work" the effect of which was to provide for fair piece rates.

Employers can choose between two ways of paying output workers. They must:

- **either** pay the national minimum wage for every hour they work;
- **or** pay them at least a 'fair' piece rate for each piece produced or task performed (rated output work).

If the employer chooses to pay by piece he must first determine the time taken to do the job by an average worker in his employment producing a given number of pieces or performing a given task. The number of pieces or tasks the average worker can do in an hour is called the mean hourly output rate.

The 'fair' piece for that piece, or task, is the one which allows workers of average speed to earn the national minimum wage (see 'Identifying basic hours after a contract is changing twice'). From April 2005 this has been set so that the piece rate had to be multiplied by 1.2. This ensures that workers whose output is a little below average, for instance because they are learning a new task, will still have the opportunity to earn the national minimum wage.

The conditions that must be satisfied for this 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' (see below) in relation to the type of piece or type of task in question;
- the worker must have been given a **written notice** containing specified information before the start of the relevant pay reference period. Further details are provided below.

Calculating the mean hourly output rate

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.

The subsequent piece rate must be based on 120% of the number of hours that an average worker takes to produce a certain number of pieces or perform a certain number of tasks. An example of this is shown below.

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.

The employer must give each worker a written notice

The notice must:

- be issued before the start of the 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). The notice must:
- explain, that for the purposes of compliance with national minimum wage laws, the worker will be treated as working for a certain period of time by his employer;

- state that, for the purposes of determining such period of time, the employer has conducted a test or made an 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; (this must have been worked out as explained above and based on 120% of the number of hours that an average worker takes to produce a certain number of pieces or perform a certain number of tasks) 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 system of fair piece rates can be found at www.berr.gov.uk/files/file11677.pdf

Calculating the ‘fair’ piece rate

A test has established that an output worker working at the average speed produces 10 pieces in an hour. This is the mean hourly output rate.

Multiplying the average worker’s time by 120% produces a rate of 10 pieces in 72 minutes, which equals 8.33 pieces in an hour.

The ‘fair’ piece rate is the hourly national minimum wage rate divided by the pieces that should be made per hour: £5.52 divided by 8.33 = 66 pence per item or task.

Another way of working this out is to divide the hourly national minimum wage rate of £5.52 by the average worker's hourly output of 10 pieces (giving 55.2 pence), then multiplying this by 1.2, giving 66 pence.

Travel time for output workers

An output worker must be paid at least the national 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 national minimum wage for every hour worked

Unless fair piece rates are being paid the employer must pay the worker, on average, the national 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 of rated output workers will still need to keep accurate information about the hours worked by his workers in order to ensure at least the national minimum wage has been paid.

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

What is unmeasured work?

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

Work is unmeasured work if it is not time work, salaried-hours work or output piece work. Employers, therefore, need to ensure that the work undertaken does not fall into any of these other categories. If it does then it is not unmeasured work.

Unmeasured work could include, in particular, work where there are certain tasks to be done but no specified hours or times when these tasks must be done or work where the employer requires the worker to work when needed or when work is available.

Who does unmeasured work?

Workers who do unmeasured work could be people who don't work set hours or receive an annual salary, for example, their job could be looking after a hostel or an inn.

Calculating hours of unmeasured work

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

There are two options for identifying the hours of unmeasured work that count for minimum wage purposes:

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

'Daily average' agreement of hours to be worked

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.

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

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

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

Someone doing unmeasured work must be paid at least the national minimum wage for time spent travelling in connection with the job. The rules on travel time generally are explained in Chapter 11: Time work. Such time would normally be included in the 'daily average' hours to be worked.

Paying the national minimum wage for every hour worked

Unless a 'daily average' agreement is reached between the employer and the worker, the employer must pay the worker, on average, the national minimum wage for every hour worked during

the pay reference period. The general record-keeping requirements apply (see Chapter 17: Record-keeping requirements), 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

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' number of hours to be worked;
- is realistic.

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

15 Agricultural workers and the national minimum wage

All agricultural workers must be paid at least the national minimum wage

Agricultural workers must receive no less than the national minimum wage and where appropriate must receive the agricultural minimum wage. Under the agricultural minimum wage, some agricultural workers will be entitled to higher rates of pay than the national minimum wage.

Calculating whether an agricultural worker has received the national minimum wage

In most cases, paying the agricultural national 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.

Details of when the agricultural minimum wage is applicable, the minimum basic and overtime rates and 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:

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

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 national minimum wage. The individual chapters should be read for further detail. To calculate whether the national minimum wage has been paid, an employer or worker needs to:

A. Calculate national minimum wage pay

- check that the person is a worker who must be paid at least the national 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 pay and identify what counts towards national minimum wage pay (Chapter 7);
- subtract from the worker's pay anything that does not count towards national minimum wage pay (Chapter 8);
- adjust the worker's pay to take account of the effect of accommodation provided by the employer (Chapter 9);
- the result should be the amount of pay which the worker has received in the pay reference period for national minimum wage purposes.

B. Calculate the hours for which the national 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 in each pay reference period. 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 national minimum wage must be paid in the pay reference period.

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

- divide the amount of pay for national minimum wage purposes 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 national minimum wage rate applicable to the worker.

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

Check against the appropriate rate for workers:

- aged 22 and above;
- aged 18-21;
- aged under 18 but above compulsory school leaving age.

17 Record-keeping requirements

Who needs to keep records?

Employers are required to keep sufficient records to show that they are paying their workers at least the national minimum wage – for many employers their existing payroll and business records will be sufficient and there will be no need to maintain separate or special records for the minimum wage. Employers who have a ‘daily average’ agreement (see section: ‘Daily average’ agreement of hours to be worked) with a worker must also keep a copy of the agreement. Employers of rated output workers paying fair piece rates must keep a copy of the written notices served on their workers (see section: The employer must give each worker a written notice) 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?

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

If a worker has reasonable grounds to believe that he has not been paid the national 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.

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

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 enforcement officer from seeing these records.

What records count as 'sufficient' records?

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 national minimum wage to a tribunal or court, the burden will be on the employer to prove that the national 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 national minimum wage records they should keep. Generally if an employer is keeping full payroll records this should be sufficient for national minimum wage purposes. If an employer is unsure if he is keeping sufficient records he may wish to seek independent legal advice.

It is for the employer to judge when, for any particular worker, he should keep more detailed records specific to payment of the national minimum wage. The closer to the minimum a worker's total 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 national minimum wage. The following comparative figures give an idea of how the main hourly national 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 national minimum wage pay; neither do they take account of extra hours or the type of work being performed:

- national minimum wage standard hourly rate: £5.52 (October 2007 rate);
- daily amount if 8 hours a day: £44.16;
- weekly amount if 40 hours/week: £220.80;
- monthly amount (22 working days at 8 hours): £971.52;
- annual amount if 40 hours/week: £11,525.76 (52.2 weeks/year).

Examples of records that may count as 'sufficient'

- total 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.

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?

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 national minimum wage records need to be kept?

The employer must keep records for a minimum of three years after the end of the pay reference period following the one that the records cover. For example, if a person is paid each calendar month, his records for the month of May 2008 would have to be kept until the end of June 2011.

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 national minimum wage. In such a case, it would still be for the employer to prove that he had paid the national minimum wage.

18 Enforcement

Main means of enforcement

The main means of enforcement are:

- **Through the enforcement agency, HM Revenue & Customs** (and DEFRA for the agricultural minimum wage): Enforcement officers have certain powers to obtain information as well as the power to issue enforcement notices requiring employers to pay the national minimum wage. Employers have the right to appeal against the issuing of an enforcement notice. If an employer does not comply with the requirements of an enforcement notice, an officer has the power, as appropriate:
 - 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 national minimum wage (e.g. rate £5.52 x 2 = £11.04), per worker for each day in respect of which the employer is in breach.
- **claims by workers before tribunals and courts:** Workers have a right to recover unpaid national minimum wage through an Employment Tribunal (in Northern Ireland an Industrial Tribunal) or other civil court

In civil cases the burden is on the employer to show that he has paid the national minimum wage. Advisory, conciliation and arbitration service (Acas) conciliation officers often have a conciliation role in cases involving tribunals. The Secretary of State must publish information about the national minimum wage when the Regulations change.

Access to national minimum wage records

If a worker believes he is entitled to the national minimum wage and believes he 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 at 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 so long as his request in writing stated that he intends to be accompanied.

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 hourly rate of the national minimum wage in force at the time of the award.

Officers of HM Revenue & Customs may ask to see an employer's records to check whether they are paying the national 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 national minimum wage has been paid rests on the employer.

HM Revenue & Customs national minimum wage compliance officers

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

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 national 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.

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

- the officer may serve an enforcement notice which requires the employer to start paying the national 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 adult minimum hourly rate for each day from the time the enforcement notice was served, and for each worker named in the enforcement notice who has not been paid the money due. The penalty for not complying with an enforcement notice would be £231.84 per worker based on the national minimum wage rate at 1 October 2007. From 1 October 2008, the penalty will increase to £240.66 per worker. The penalty notice does not recalculate the amount owed to the worker but penalises the employer for non-compliance with the enforcement 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.

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 national minimum wage is a criminal offence (see section: Criminal offences and prosecution below).

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

Claims by workers before tribunals and courts

A worker can bring a claim before an employment tribunal (or an industrial tribunal in Northern Ireland) to recover any money which he believes he is owed as a result of not receiving the national minimum wage. Alternatively, a worker can go to a civil court to recover the money due to him.

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 national minimum wage, or simply because the worker is (or is going to become) eligible for the national minimum wage. Free confidential advice on this and other employment rights and work-related matters is available by contacting Acas on 08457 474747.

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/her, 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 national minimum wage.

In civil cases, the burden is on the employer to prove that he has paid the national minimum wage to the worker, rather than for the worker to prove that he has not received the national minimum wage.

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

There are six criminal offences relating to the national minimum wage, with fines up to a maximum of £5,000 for each offence. They are

- refusal or wilful neglect to pay national minimum wage;
- failing to keep national minimum wage records;

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- 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 2008).

19 Frequently asked questions

Q: When did the national minimum wage come into force?

A: 1 April 1999.

Q: Who is covered?

A: Most workers who are aged over compulsory school age 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.

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 national 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 national 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 the National minimum wage enforced?

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

An employer who does not pay national minimum wage to his workers can be issued with an enforcement notice and may also be issued with a penalty notice. The penalty which is a civil fine is worked out on the basis of twice the current national minimum wage hourly rate for each day an employer does not comply with an enforcement notice for each worker.

The National Minimum Wage Act 1998 makes it a criminal offence to refuse or wilfully neglect to pay the national minimum wage; to fail to keep national 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 July 2008).

If you would like further information please ring the national minimum wage helpline (local call rates apply).

20 Further information and contacts

National minimum wage enquiries

For advice or to find out more about the national minimum wage employers and workers can:

- ✓ **call the national minimum wage helpline on 0845 6000 678.** 9am – 5pm Monday to Friday. Calls are charged at local rate. The helpline can take calls in over 100 languages. To help us improve the quality of our service your call may be monitored or recorded. This is for internal training purposes only
- ✓ **email** nmw@hmrc.gov.uk
- ✓ **write** to National Minimum Wage Enquiries, Freepost PHQ1, Newcastle Upon Tyne, NE98 1ZH
- ✓ **For advice about employment agency legislation or if you wish to complain about an agency, call 0845 955 5105**

In Northern Ireland call 0845 6500 207.

To make a complaint that someone may be being paid less than national minimum wage

- ✓ **call the national minimum wage helpline on 0845 6000 678.** 9am – 5pm Monday to Friday. Calls are charged at local rate. The helpline can take calls in over 100 languages. To help us improve the quality of our service your call may be monitored or recorded. This is for internal training purposes only
- ✓ **complete the online complaint form at** www.hmrc.gov.uk/nmw/complaint.htm

- ✓ **write** to National Minimum Wage Enquiries, Freepost PHQ1, Newcastle Upon Tyne, NE98 1ZH. You can get a complaint form by calling 0845 015 0010 and quoting URN 07/1610 or from www.berr.gov.uk/publications

In Northern Ireland call 0845 6500 207.

For further information about the national minimum wage visit the BERR national minimum wage website at www.berr.gov.uk/employment/pay/index.html and Directgov www.direct.gov.uk/nmw and Business Link www.businesslink.gov.uk/employingpeople.

Minority languages

Translations of the guide for workers, which gives a summary of national minimum wage information, are available in the following minority languages: Arabic, Bengali, Gujarati, Punjabi, Hindi, Urdu, Chinese Tamil, Polish, Slovakian and Lithuanian. Call 0845 015 0010 or download one from www.berr.gov.uk/employment/pay/national-minimum-wage/Further-Guidance/page21693.html, or at Directgov www.direct.gov.uk/nmw. 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 national 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.

Tribunals Service

For information about employment tribunal procedures you should call the Tribunals 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

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 online at www.opsi.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

Year	Main rate (Workers aged 22+) £ per hour	Development rate (Workers aged 18–21) £ per hour	Workers (aged 16–17 £ per hour rate)
1 April 1999	3.60	3.00	--
1 June 2000	3.60	3.20	--
1 October 2000	3.70	3.20	--
1 October 2001	4.10	3.50	--
1 October 2002	4.20	3.60	--
1 October 2003	4.50	3.80	--
1 October 2004	4.85	4.10	3.00*
1 October 2005	5.05	4.25	3.00
1 October 2006	5.35	4.45	3.30
1 October 2007	5.52	4.60	3.40
1 October 2008	5.73	4.77	3.53

- workers aged 16–17 (above school leaving age) were not previously entitled to receive the national minimum wage.
- a development rate for workers aged 22 starting a new job with a new employer and doing accredited training was abolished for pay reference periods starting on or after 1 October 2006. More information about the rates can be obtained from the national minimum wage helpline if necessary.

Accommodation offset

Special rules applied prior to 1 October 2003. For details and the appropriate rates, please contact NMW Helpline.

For pay reference periods from and including:	Per day (£)	Weekly maximum (£)
1 April 1999	2.85	19.95
1 October 2001	3.25	22.75
1 October 2003	3.50	24.50
1 October 2004	3.75	26.25
1 October 2005	3.90	27.30
1 October 2006	4.15	29.05
1 October 2007	4.30	30.10
1 October 2008	4.46	31.22



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