



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Exclusions*

#### **43 Share fishermen.**

A person—

- (a) employed as master, or as a member of the crew, of a fishing vessel, and
- (b) remunerated, in respect of that employment, only by a share in the profits or gross earnings of the vessel,

does not qualify for the national minimum wage in respect of that employment.

#### **44 Voluntary workers.**

(1) A worker employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body does not qualify for the national minimum wage in respect of that employment if he receives, and under the terms of his employment (apart from this Act) is entitled to,—

- (a) no monetary payments of any description, or no monetary payments except in respect of expenses—
  - (i) actually incurred in the performance of his duties; or
  - (ii) reasonably estimated as likely to be or to have been so incurred; and
- (b) no benefits in kind of any description, or no benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of the employment.

[<sup>F1</sup>(1A) For the purposes of subsection (1)(a) above, expenses which—

- (a) are incurred in order to enable the worker to perform his duties,
- (b) are reasonably so incurred, and
- (c) are not accommodation expenses,

are to be regarded as actually incurred in the performance of his duties.]

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- (2) A person who would satisfy the conditions in subsection (1) above but for receiving monetary payments made solely for the purpose of providing him with means of subsistence shall be taken to satisfy those conditions if—
- (a) he is employed to do the work in question as a result of arrangements made between a charity acting in pursuance of its charitable purposes and the body for which the work is done; and
  - (b) the work is done for a charity, a voluntary organisation, an associated fund-raising body or a statutory body.
- (3) For the purposes of subsection (1)(b) above—
- (a) any training (other than that which a person necessarily acquires in the course of doing his work) shall be taken to be a benefit in kind; but
  - (b) there shall be left out of account any training provided for the sole or main purpose of improving the worker's ability to perform the work which he has agreed to do.
- (4) In this section—
- “associated fund-raising body” means a body of persons the profits of which are applied wholly for the purposes of a charity or voluntary organisation;
- “charity” means a body of persons, or the trustees of a trust, established for charitable purposes only;
- “receive”, in relation to a monetary payment or a benefit in kind, means receive in respect of, or otherwise in connection with, the employment in question (whether or not under the terms of the employment);
- “statutory body” means a body established by or under an enactment (including an enactment comprised in Northern Ireland legislation) [<sup>F2</sup>and includes the Children's Panel];
- “subsistence” means such subsistence as is reasonable in the circumstances of the employment in question, and does not include accommodation;
- “voluntary organisation” means a body of persons, or the trustees of a trust, which is established only for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes, but which is not a charity.

#### Textual Amendments

- F1** S. 44(1A) inserted (13.1.2009) by [Employment Act 2008 \(c. 24\)](#), **ss. 14**, 22(1)(d)
- F2** Words in s. 44(4) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\)](#), **art. 1(2)**, **Sch. 1 para. 6**; [S.S.I. 2013/195](#), **art. 2**

#### [<sup>F3</sup>44A **Religious and other communities: resident workers.**

- (1) A residential member of a community to which this section applies does not qualify for the national minimum wage in respect of employment by the community.
- (2) Subject to subsection (3), this section applies to a community if—
  - (a) it is a charity or is established by a charity,

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- (b) a purpose of the community is to practise or advance a belief of a religious or similar nature, and
  - (c) all or some of its members live together for that purpose.
- (3) This section does not apply to a community which—
- (a) is an independent school [<sup>F4</sup>or an alternative provision Academy that is not an independent school], or
  - (b) provides a course of further or higher education.
- (4) The residential members of a community are those who live together as mentioned in subsection (2)(c).
- (5) In this section—
- (a) “charity” has the same meaning as in section 44, and
  - (b) “independent school” has the same meaning as in section 463 of the <sup>M1</sup>Education Act 1996 (in England and Wales), section 135 of the <sup>M2</sup>Education (Scotland) Act 1980 (in Scotland) and Article 2 of the <sup>M3</sup>Education and Libraries (Northern Ireland) Order 1986 (in Northern Ireland).
- (6) In this section “course of further or higher education” means—
- (a) in England and Wales, a course of a description referred to in Schedule 6 to the <sup>M4</sup>Education Reform Act 1988 or Schedule 2 to the <sup>M5</sup>Further and Higher Education Act 1992;
  - (b) in Scotland, a course or programme of a description mentioned in or falling within section 6(1) or 38 of the <sup>M6</sup>Further and Higher Education (Scotland) Act 1992;
  - (c) in Northern Ireland, a course of a description referred to in Schedule 1 to the <sup>M7</sup>Further Education (Northern Ireland) Order 1997 or a course providing further education within the meaning of Article 3 of that Order.]

#### Textual Amendments

- F3** S. 44A inserted (25.10.1999) by 1999 c. 26, s. 22; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I**
- F4** Words in s. 44A(3)(a) inserted (E.W.) (1.4.2012) by [The Alternative Provision Academies \(Consequential Amendments to Acts\) \(England\) Order 2012](#) (S.I. 2012/976), art. 1, **Sch. para. 10** (with art. 3)

#### Marginal Citations

- M1** 1996 c. 56.
- M2** 1980 c. 44.
- M3** S.I. 1986/594 (N.I. 3).
- M4** 1988 c. 40.
- M5** 1992 c. 13.
- M6** 1992 c. 37.
- M7** S.I. 1997/1772 (N.I. 15).

## 45 Prisoners.

- (1) A prisoner does not qualify for the national minimum wage in respect of any work which he does in pursuance of prison rules.
- (2) In this section—

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“prisoner” means a person detained in, or on temporary release from, a prison;

“prison” includes any other institution to which prison rules apply;

“prison rules” means—

- (a) in relation to England and Wales, rules made under section 47 of the <sup>M8</sup>Prison Act 1952;
- (b) in relation to Scotland, rules made under section 39 of the <sup>M9</sup>Prisons (Scotland) Act 1989; and
- (c) in relation to Northern Ireland, rules made under section 13 of the <sup>M10</sup>Prison Act Northern Ireland) 1953.

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**Marginal Citations**

**M8** 1952 c. 52.

**M9** 1989 c. 45.

**M10** 1953 c. 18 (N.I.).

**[<sup>F5</sup>45A Persons discharging fines by unpaid work**

A person does not qualify for the national minimum wage in respect of any work that he does in pursuance of a work order under Schedule 6 to the Courts Act 2003 (discharge of fines by unpaid work).]

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**Textual Amendments**

**F5** S. 45A inserted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), **Sch. 8 para. 382**; S.I. 2005/910, art. 3(y)

**[<sup>F6</sup>45B Immigration: detained persons**

Section 153A of the Immigration and Asylum Act 1999 (c. 33) (persons detained in removal centres) disqualifies certain persons for the national minimum wage.]

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**Textual Amendments**

**F6** S. 45B inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 59(2)**, 62(1)(2); S.I. 2006/2226, art. 3, Sch. 1

**Changes to legislation:**

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