



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Regulations relating to the national minimum wage*

#### **2 Determination of hourly rate of remuneration**

- (1) The Secretary of State may by regulations make provision for determining what is the hourly rate at which a person is to be regarded for the purposes of this Act as remunerated by his employer in respect of his work in any pay reference period.
- (2) The regulations may make provision for determining the hourly rate in cases where—
  - (a) the remuneration, to the extent that it is at a periodic rate, is at a single rate;
  - (b) the remuneration is, in whole or in part, at different rates applicable at different times or in different circumstances;
  - (c) the remuneration is, in whole or in part, otherwise than at a periodic rate or rates;
  - (d) the remuneration consists, in whole or in part, of benefits in kind.
- (3) The regulations may make provision with respect to—
  - (a) circumstances in which, times at which, or the time for which, a person is to be treated as, or as not, working, and the extent to which a person is to be so treated;
  - (b) the treatment of periods of paid or unpaid absence from, or lack of, work and of remuneration in respect of such periods.
- (4) The provision that may be made by virtue of paragraph (a) of subsection (3) above includes provision for or in connection with—
  - (a) treating a person as, or as not, working for a maximum or minimum time, or for a proportion of the time, in any period;
  - (b) determining any matter to which that paragraph relates by reference to the terms of an agreement.
- (5) The regulations may make provision with respect to—
  - (a) what is to be treated as, or as not, forming part of a person's remuneration, and the extent to which it is to be so treated;

- (b) the valuation of benefits in kind;
  - (c) the treatment of deductions from earnings;
  - (d) the treatment of any charges or expenses which a person is required to bear.
- (6) The regulations may make provision with respect to—
- (a) the attribution to a period, or the apportionment between two or more periods, of the whole or any part of any remuneration or work, whether or not the remuneration is received or the work is done within the period or periods in question;
  - (b) the aggregation of the whole or any part of the remuneration for different periods;
  - (c) the time at which remuneration is to be treated as received or accruing.
- (7) Subsections (2) to (6) above are without prejudice to the generality of subsection (1) above.
- (8) No provision shall be made under this section which treats the same circumstances differently in relation to—
- (a) different areas;
  - (b) different sectors of employment;
  - (c) undertakings of different sizes;
  - (d) persons of different ages; or
  - (e) persons of different occupations.