



Department  
for Business  
Innovation & Skills

## NATIONAL MINIMUM WAGE

Consultation on draft  
Consolidated Regulations

JULY 2014

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# National Minimum Wage: Consultation on draft Consolidated Regulations

The National Minimum Wage Regulations 1999 came into force on 1 April 1999. They set out detailed rules, such as the minimum wage rates, exemptions, what payments count towards minimum wage pay, how to determine what hours have been worked for minimum wage purposes, and what minimum wage records need to be kept.

Since they were introduced, they have been amended over twenty times. As well as the annual changes to the minimum wage rates, there have been a number of substantial changes to the rules, for example in relation to exemptions to the minimum wage, what counts as hours worked for time workers and the replacement of “fair estimate” agreements for output work with rated output work.

As part of the Red Tape Challenge, the Government concluded that the 1999 Regulations and the subsequent amending regulations should be consolidated into a single set of Regulations. We have also taken the opportunity to update the drafting to reflect current drafting practice and to try and ensure that the rules are set out as clearly as possible.

This consultation seeks views on whether the draft National Minimum Wage (Consolidation) Regulations are clear and workable. The consultation is not intended to reopen the policy decisions behind the detailed rules.

Issued: 22 July 2014

Respond by: 15 September 2014

Enquiries to: Vibeke Bjornfors, National Minimum Wage policy team, BIS, 3<sup>rd</sup> Floor, 1 Victoria Street, London, SW1H 0ET, [vibeke.bjornfors@bis.gsi.gov.uk](mailto:vibeke.bjornfors@bis.gsi.gov.uk)

This consultation is relevant to: All employers and employees and representative bodies

## 1. Ministerial Foreword



Thank you for your interest in this consultation on the Government's proposals on consolidating the National Minimum Wage Regulations.

The Government is committed to the minimum wage as it provides protection for low-paid workers and incentivises work. It is important that employers understand their obligations and workers understand their rights. The Regulations contain detailed rules that underpin the minimum wage regime. They have been amended many times and we therefore concluded that the time was right to consolidate the Regulations.

The consolidated Regulations have been drafted to set out the detailed rules as clearly as possible. It is important, however, that we do not inadvertently change the rules and open loopholes that may allow the small minority of unscrupulous employers to evade their responsibilities.

I encourage you to respond to this consultation.

**Jo Swinson MP**

**Minister for Employment Relations and Consumer Affairs**

## 2. Executive Summary

- 2.1 Since they were introduced, the National Minimum Wage Regulations 1999 (“the 1999 Regulations”) have been amended over twenty times. As well as the annual changes to the minimum wage rates, there have been a number of substantial changes to the rules, for example in relation to exemptions to the minimum wage, what counts as hours worked for time workers and the replacement of “fair estimate” agreements for output work with rated output work.
- 2.2 As part of the Red Tape Challenge, the Government concluded that the 1999 Regulations and the subsequent amending regulations should be consolidated into a single set of Regulations. We have also taken the opportunity to update the drafting to reflect current drafting practice (such as making the provisions gender-neutral) and to try and ensure that the rules are set out as clearly as possible. For example, we use a formula where this would be easier to understand than setting everything out in words.
- 2.3 There are more individual regulations in the draft consolidated Regulations. This is because we have tried to ensure that each individual regulation does not cover a number of different issues. For example, regulation 15 of the 1999 Regulations (“*provisions in relation to time work*”) sets out the rules on the treatment of time when a worker is: at home and required to be available for work; provided with sleeping facilities; travelling; engaged in industrial action; and on a rest break. These rules are now set out in separate regulations which will make it easier to find the relevant rules.
- 2.4 A table which shows where the current regulations can be found in the draft consolidated regulations is enclosed at section 8 of this document.
- 2.5 This consultation seeks views on whether the draft National Minimum Wage (Consolidation) Regulations are sufficiently clear and workable. The consultation is not intended to reopen the policy decisions behind the detailed rules.
- 2.6 The Government believes that it is important that the minimum wage rules are appropriate. In the longer term we will be doing further work to review some of the detailed rules, which may require substantive change. Such proposals for policy changes would be likely to be the subject of a future consultation. For example, we will be looking to try and reduce the complexity of the apprentice minimum wage rate and have asked the Low Pay Commission to provide advice on this issue as part of their report to Government in 2015. We are also seeking views on whether there are other areas of the minimum wage rules that could be improved.

### 3. How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

The online consultation response form is available on our Citizen Space consultation hub: <https://bisgovuk.citizenspace.com/digital/nmw-draft-consolidated-regulations> until 15 September 2014. The form can be submitted online/by email or by letter to:

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3<sup>rd</sup> Floor  
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London  
SW1H 0ET

Telephone: 0207 215 6424

Email: [vibeke.bjornfors@bis.gsi.gov.uk](mailto:vibeke.bjornfors@bis.gsi.gov.uk)

## **4. Confidentiality & Data Protection**

**4.1 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.**

**4.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.**

## 5. Help with queries

Questions about the policy issues raised in the document can be addressed to:

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The consultation principles are in Annex A.

## 6. The proposals

6.1 It has been over fifteen years since the 1999 Regulations were originally drafted. As part of the consolidation exercise, we have taken the opportunity to update the drafting to reflect current drafting practice (such as making the provisions gender-neutral) and to try and ensure that the rules are set out as clearly and accessibly as possible.

6.2 The consolidated regulations are structured differently to the original 1999 Regulations. The new structure is as follows:

- Part 1 – General and Interpretation
  - Part 2 – Rates of the National Minimum Wage and the Pay Reference Period
  - Part 3 – Calculation of the hourly rate
  - Part 4 – Remuneration for the Purposes of the National Minimum Wage
  - Part 5 – Hours Worked for the Purposes of the National Minimum Wage
    - Chapter 1 – determining the hours of work
    - Chapter 2 – salaried hours work
    - Chapter 3 – time work
    - Chapter 4 – output work
    - Chapter 5 – unmeasured work
  - Part 6 – Exclusions
  - Part 7 – Records.
- 
- Schedule of Revocations

6.3 This section provides a commentary on the provisions.

### Question 1:

Do you consider that there are any provisions which do not work or are unclear? Yes/No

If yes, please explain your reasons.

## Part 1 – General and interpretation

- 6.4 **Regulation 1** provides the citation and coming into force of the consolidated regulations.
- 6.5 **Regulation 2** provides that the regulations in the Schedule are to be revoked.
- 6.6 **Regulation 3** sets out the definitions that are used throughout the regulations. Where a term is only used in one regulation, any definition is contained in that particular regulation. Some definitions in relation to a particular part or which confer substantive obligations are found in that part.

## Part 2 – Rates of the National Minimum Wage and the Pay Reference Period

- 6.7 **Regulation 4** consolidates the levels of the four minimum wage rates into one regulation so they are easier to find.
- 6.8 **Regulation 5** sets out the conditions that need to be fulfilled for a worker to be eligible for the apprentice rate. This is a separate provision as the age of the worker is not the sole determining factor for qualifying for that rate.
- 6.9 **Regulation 6** defines the pay reference period – the period by reference to which the minimum wage must be paid. The pay reference period is usually a month. But if the worker is paid by reference to a shorter period, the pay reference period is that shorter period. This definition applies to the Regulations and to the National Minimum Wage Act.

## Part 3 – Calculation of the hourly rate: commentary on changes

- 6.10 **Regulation 7** sets out how to calculate whether a worker is being paid the minimum wage in a pay reference period. This is the amount of pay which counts for minimum wage purposes divided by the hours which have been worked. We have set this out in a formula, rather than expressing it in words as the 1999 regulations do, as we think this is clearer.
- 6.11 The rules on calculating the remuneration element of the formula are in Part 4; and the rules on calculating the hours of work element are in Part 5.

## Part 4 – Remuneration for the Purposes of the National Minimum Wage

- 6.12 This Part sets out the rules on how to calculate the amount of pay which counts towards the minimum wage. We have restructured these provisions in order to try and make them clearer, for example by putting provisions dealing with payments from the employer that don't count towards minimum wage pay, which are currently in a number of separate regulations, into a single regulation.

- 6.13 **Regulation 8** provides that, for the purposes of calculating the minimum wage, remuneration is the payments set out in Chapter 1 (regulations 9 – 10) less the reductions set out in Chapter 2 (regulations 11 – 15).

### Chapter 1 Payments from the employer to the worker

- 6.14 **Regulation 9** sets out what is taken into account when determining pay for minimum wage purposes. As well as payments from the employer to the worker, the employer may also take into account the accommodation offset rate where accommodation is provided free of charge. The regulations refer to “payments” rather than “money payments” as benefits in kind, other than the accommodation offset amount, are specifically excluded by regulation 10.
- 6.15 **Regulation 10** sets out the payments which come from the employer that are not taken into account in calculating minimum wage pay. The general rule is that the minimum wage does not include benefits in kind; the only exception to this is where an employer provides living accommodation (and then only to a set daily amount).

### Chapter 2 Reductions

- 6.16 **Regulation 11** sets out the general rule about how to arrive at the total of reductions which need to be taken away from remuneration to calculate minimum wage pay. Reductions fall into two categories: certain deductions that are made by the employer and certain payments that are made by a worker. Adding these together constitutes the total reductions. We have split deductions and payments into separate regulations according to type.
- 6.17 **Regulation 12(1)** sets out the general rule that deductions by an employer or payments from the worker for the employer’s own use and benefit are not allowed if they reduce pay below the level of the minimum wage. Regulation 12(2) sets out the exceptions to this general rule.
- 6.18 **Regulation 13** provides that deductions or payments in respect of a worker’s expenditure reduce pay for minimum wage purposes. The only exception is where a worker pays a third party for something and is reimbursed by the employer. In this case, the net effect on minimum wage pay is zero – neither the payment from the worker (regulation 13(b)) nor the reimbursement by the employer (regulation 10(l)) is counted.
- 6.19 **Regulation 14 and 15** are concerned with the situation where an employer provides accommodation for the worker. Regulation 14(1) provides that where an employer charges more for accommodation than the accommodation offset, the excess amount reduces pay for minimum wage purposes. Regulation 14(2) sets out the circumstances in which the accommodation offset rules do not apply (in relation to the education and social housing sectors). Regulation 15 sets out how the accommodation offset rules apply where a worker is paid by the time they work and provided with accommodation and the worker has been absent for some of the pay reference period.

### Chapter 3 Accommodation Offset Amount

- 6.20 **Regulation 16** sets out how to determine the amount of the accommodation offset.

## Part 5 – Hours Worked for the Purposes of the National Minimum Wage

### Chapter 1 – Determining the Hours of Work

- 6.21 **Regulation 17** sets out that the provisions in the Chapters in Part 5 are used to determine what are the hours of work, or hours treated as such, in a pay reference period.
- 6.22 **Regulation 18** provides that, where a worker must provide a record of hours in order to be paid, if the record is not provided then the hours are not included in the calculation to determine whether the minimum wage has been paid.
- 6.23 Chapters 2 to 5 of Part 5 set out the provisions for the different types of work: salaried hours work; time work; output work; and unmeasured work. As noted above, as well as determining what the hours worked are, these provisions also determine the hours that are to be treated as being worked, which includes time spent training and travelling. **Regulation 19** provides a substantive definition of “training” and **Regulation 20** provides a definition of “travelling”.

### Chapter 2 – salaried hours work

- 6.24 Salaried hours workers are workers who are paid an annual salary for an annual number of hours in equal weekly or monthly instalments. The effect of the regulations is to treat annual working hours as if they were evened out across the year, reflecting the evening out of pay received.
- 6.25 The salaried hours rules set out the basic requirements:
- The definition of salaried hours work – what requirements need to be fulfilled if work is to be salaried hours work;
  - What hours of work count as work and therefore are to be included in the basic annual hours set out in the contract; and
  - How to calculate the salaried hours work in each pay reference period.
- 6.26 The rules are also designed to cover certain specific situations:
- where the contract is varied (either to reduce or increase the number of basic hours) during the year;
  - where a worker works more than their contracted basic hours before the end of the year; and
  - where the employment terminates (or is changed so it is no longer a contract for salaried hours work) during the year.
- 6.27 **Regulation 21** sets out the meaning of salaried hours work. The annual basic number of hours which a worker must work must be capable of being ascertained, although they do

not need to be explicitly stated in the contract. In regulation 21(2) we have omitted the words “entitled to the annual salary that are actually worked by him (if any)”. We do not consider that these words add anything to the new drafting and that the omission does not affect the meaning. Regulation 21(3) and (4) simplify the current provisions, but the practical effect is the same.

- 6.28 **Regulation 22** sets out how to calculate the salaried hours work in each pay reference period. It has been redrafted to avoid starting with exceptions and cross-references to other regulations. Regulation 22(4) no longer includes a reference to “(including non-working days)” as we do not consider that this adds anything not already reflected. Regulations 22(6) and (7) refer to other provisions later on in the regulations which set out how the calculation works if the basic hours are exceeded or the employment terminated/contract changed so it is no longer a salaried hours contract. The 1999 Regulations are not signposted in this way.
- 6.29 **Regulation 23** sets out the time that does not count as part of a salaried hours worker’s basic hours and which therefore must be reduced from the basic hours. The starting point is that everything in the contract for which the annual salary is payable is included as working time. Unlike time workers, hours of absence are counted as hours worked for a salaried hours worker if they are paid their normal salary when they are absent. For example, rest and lunch breaks, holidays, sick absence or maternity leave are counted as time when the minimum wage is payable if they form part of the worker’s basic minimum hours under the contract.
- 6.30 There are two situations where time does not count as time for which the minimum wage is payable: when the employer is contractually entitled to - and does in fact - pay a worker less than he would otherwise do because the worker is absent (e.g. where a worker is paid half-pay for a period of sick absence); and when a salaried hours worker is engaged in industrial action (time when the minimum wage is payable) regardless of whether the worker is entitled to full or partial pay under their contract.
- 6.31 **Regulations 24 to 29** provide for a number of situations, including where the worker works more than the basic annual hours or where the basic annual hours are changed by a variation in the contract.
- 6.32 **Regulation 24** defines a “calculation year” which is used to determine whether extra hours have been worked over and above the basic annual hours. It is necessary to fix the starting point for the calculation. There are separate definitions depending on whether the worker is paid monthly or weekly and whether they started before or after the original Regulations came into force on 1 April 1999.
- 6.33 In regulation 24(2) we have removed the words “the year beginning on the day these Regulations come into force” as claims in relation to a calculation year starting on 1 April 1999 are out of time (the Limitation Act prevents claims going back more than 6 years).
- 6.34 **Regulation 25** sets out how to calculate the basic hours in the calculation year. The starting point is that the basic hours are to be calculated in the calculation year in accordance with the contract at the start of the calculation year unless the contract is varied. Regulation 25(3) and (4) cover situations where the contract is varied once, and more than once, respectively during the calculation year. The formula in regulation 25(5)

explains the basic approach that is taken for calculating the proportions of the year that fall before and after a variation.

6.35 **Regulations 26 to 28**, together with the interpretation in regulations 24 and 25, cover the situation where a worker exceeds his basic hours during the calculation year but their contract does not entitle them to additional pay for the extra hours. The rules set out

- how to determine whether the basic hours have been exceeded in the calculation year;
- what the effect is in the pay reference period where the basic hours are exceeded; and
- what the effect is in any subsequent pay reference periods during the calculation year.

6.36 **Regulation 26** sets out how to determine whether the basic hours have been exceeded in the calculation year. In broad brush terms, an employer needs to:

- Add together: the basic hours the worker has worked; the hours within basic hours for which the worker has been absent (unless it is time that is to be subtracted from the basic hours under regulation 23); the unpaid extra hours which the worker has worked; and the time that is treated as being worked in the excess hours; and
- Take off the hours during which a worker took part in industrial action.

6.37 **Regulation 27** sets out the rules which determine what time does, and does not, count as part of the excess hours where the basic hours are exceeded. This is not covered by regulation 23, which only sets out where time does not count towards the basic hours in a pay reference period where the worker does not work more than the basic hours in a year. The rules are consistent with the equivalent provisions on time work - i.e. if it is time that counts as work for time workers then it also counts for salaried hours workers who are working excess hours.

6.38 **Regulation 28** sets out how to determine the time worked in the pay reference period in which the basic hours were exceeded. This is done by adding together:

- The number of basic hours in the period up to the point the basic hours were exceeded;
- The number of basic hours in the period after the point the basic hours were exceeded; and
- The number of hours actually worked in the period after the point the basic hours were exceeded plus the number of hours after this point that are treated as being worked by regulation 27.

6.39 **Regulation 28** also sets out how to determine the time worked in the subsequent pay reference periods. This is done by adding together:

- the proportion of the basic hours in the pay reference period as calculated by regulation 22;

- the number of hours actually worked in the pay reference period; and
- the number of hours that were treated as being worked by regulation 27.

6.40 **Regulation 29** describes how to calculate the hours of salaried hours worked in the final pay reference period. Regulation 29(2) covers the situation where the annual basic hours have not been exceeded; regulation 29(3) covers the situation where they have been exceeded.

6.41 Regulation 29(4) provides that if a salaried hours contract is varied and the effect of this is that it is no longer a salaried hours contract, the rest of regulation 29 applies. The reference to the last day of the worker's final pay reference period is treated as being the day before the date the variation took effect.

### Chapter 3 – time work

6.42 **Regulation 30** sets out the definition of time work. We have made a number of drafting changes. For example we have taken out the phrase “work that is paid for under a worker's contract” as we consider these words can be removed without changing its effect. We have changed “paid” to “entitled to be paid” as the work is time work if there is such an entitlement, regardless of whether or not the employer pays for it.

6.43 **Regulation 31** makes it clear that the hours that count as time work also include time that is treated as having been worked. The rest of the regulations in Chapter 3 set out what time is to be treated as time work or not. Regulation 31 draws a distinction between hours of time work worked by the worker and hours treated as time work. If the worker is required to work under the contract it is time work and regulation 32 is not engaged.

6.44 **Regulation 32** deals with a situation where the worker is available at or near a place of work. It applies where the worker is not required to work in those hours but is required to be available. The provisions in regulation 32(2) that a worker is only available when they are awake will only apply if the worker is required to be “available” for the purposes of working but not actually required to work.

6.45 **Regulation 33** provides time spent training, when the worker would otherwise be working, is treated as time work. The definition of “training”, which applies to all references to training in Part 5, has been moved to Regulation 19.

6.46 **Regulation 34** sets out the rules on travelling time. It makes clear that hours travelling are to be treated as hours for which the minimum wage must be paid, unless the travelling is between the worker's home and the place of work. Where a worker is carrying out assignments at different places, the time spent travelling between assignments is time for which the minimum wage must be paid.

6.47 We have tried to clarify the drafting. For example we consider the words: “duties carried out in the course of [time work]” can be removed without changing the intended effect. “Time work” is already defined in regulation 30 and the travelling is for the purpose of that work (i.e. the duties carried out in the course of time work *is* the time work).

6.48 **Regulation 35** deals with situations that are not treated as time work. Regulation 35(3) provides that where a worker takes a rest break, the time is not treated as time work. The

current provision (in regulation 15(7) of the 1999 Regulations) refers to a worker's entitlement to a rest break. We consider that the legal effect of regulation 15(7) is that where a worker takes the rest break then the time is not time for which the minimum wage should be paid, whereas if a worker works through their rest break then the time counts for minimum wage purposes. Regulation 35 makes this clear.

#### Chapter 4 – output work

- 6.49 Output work is work that is paid for according to the number of things that a worker makes or tasks they perform. It is commonly known as “piece work” or “fair piece rates”.
- 6.50 As the minimum wage is set as an hourly rate, there have to be specific provisions to apply the hourly rate to those who are paid by reference to output. It would be impossible to define different piece rates for all the different items produced by workers on piece rates. The Regulations therefore provide a way of arriving at the rate that must be paid per piece/task in order to comply with the minimum wage.
- 6.51 **Regulation 36** defines output work. The reference to number/value of sales or transactions completed in the 1999 Regulations has been condensed to “a number of tasks performed”. No change in policy is intended.
- 6.52 **Regulation 37** provides that the output work can either be the actual time spent by the work doing the work, or the time treated as being worked through the rated output provisions that follow. Where the employer has not provided an output worker with a written notice that complies with the statutory conditions, the worker has to be paid for each hour they work.
- 6.53 **Regulation 38** provides that the time which a worker spends training is treated as time work. Therefore, an output worker must be paid on a time basis – i.e. on average the minimum wage for each hour spent on training in a pay reference period.
- 6.54 **Regulation 39** sets out the hours of travelling that are to be treated as hours of output work. The general proposition is that time spent travelling for the purposes of doing output work is treated as time spent doing output work.
- 6.55 The exception to this is time spent travelling between a worker's home/temporary residence and the premises he works/reports. This is not treated as time spent doing output work, except where the worker is a homemaker (in which case, any time spent travelling to the premises to which they report is treated as time spent doing output work).
- 6.56 **Regulation 40** provides that time spent by a worker taking part in industrial action is not treated as output work.
- 6.57 **Regulation 41** sets out the conditions that must be fulfilled in order to use rated output work rates, historically known as ‘fair piece’ rates. One of the conditions is that a notice is provided by the employer to the worker. Paragraph (2) sets out what must go in that notice. If a worker is not provided with a written notice that complies with these conditions, the worker has to be paid the minimum wage on average for each hour they work.

- 6.58 **Regulation 42** defines the average hourly output rate for the piece or tasks and sets out how employers determine this rate. It is the mean number of pieces or tasks that workers of the employer doing that work produce or perform per hour.
- 6.59 The employer can either carry out a test of all (or a representative sample of) the workers doing that work; or can estimate the average number of pieces produced/tasks performed. An employer can only use an estimate if a test has already been carried out, but where a fair adjustment needs to be made (for example, where the test has been carried out in relation to the same item but in different working conditions).
- 6.60 **Regulation 43** sets out how employers calculate the rate for rated output work. This is set at 120% of the number of pieces/tasks the average worker can do in an hour. This is to allow workers who are slightly slower than the average to still get the minimum wage.

## Chapter V – unmeasured work

- 6.61 Work is unmeasured work if it is not time work, salaried-hours work or output work. It could include, for example, 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.
- 6.62 In unmeasured work, there will be no exact relationship between the work being performed, the time spent performing the work, and the amount of payment. There therefore needs to be a way of arriving at the number of hours worked for minimum wage workers in such circumstances. There are two alternative ways of determining the hours of unmeasured work done – either: the total number of hours spent by the worker in carrying out their contractual duties; or the time specified in a daily average agreement.
- 6.63 The daily average agreement is a written agreement with the worker which sets out the average number of hours that the worker is likely to spend each day in doing the tasks assigned to them provided they are available to carry out their duties that day for the full amount of time expected under the contract. Where the worker works for part of the day, then the hours for that day are reduced proportionally.
- 6.64 **Regulation 44** defines unmeasured work. **Regulation 45** makes it clear that an employer can either pay for the total number of hours spent by the worker in carrying out their contractual duties (i.e. in the same way as a worker doing time work) or the time specified in a daily average agreement.
- 6.65 **Regulation 46** provides that time training, where the worker would otherwise be working, as treated as unmeasured work. **Regulation 47** provides that the hours travelling for the purpose of unmeasured work are to be treated as working time. **Regulation 48** provides that time spent taking part in industrial action is not counted as hours spent doing unmeasured work.
- 6.66 **Regulation 49** sets out the requirements for a daily average agreement. The drafting has been modernised and broken up a bit more for readability. For an agreement to be valid, it must: be in writing; be made before the start of the pay reference period to which it relates; and set out the average daily number of hours the worker is likely to spend each day performing the work provided to them. A daily average agreement can cover a number of pay reference periods if there is no change in the average number of hours.

- 6.67 **Regulation 50** sets out the hours of unmeasured work which are treated as worked under a daily average agreement. We have removed the concept of “ascertained hours” which was used in the 1999 Regulations as we believe that this causes unnecessary complexity. It has been replaced with a simpler statement of what is to be treated as unmeasured work where a daily average agreement applies.
- 6.68 If there is a valid daily average agreement, the worker must be paid the minimum wage for the hours specified in the agreement for each day worked in the pay reference period. If the worker is not available for some of the time on a day covered in the daily average agreement, the employer needs to calculate the proportion of the time the worker is available in relation to the full amount of time as set out in the contract.

## Part 6 – Exclusions<sup>1</sup>

- 6.69 In broad brush terms, training, work experience or temporary work that is provided under the auspices of Government – for example, as part of a Government programme to help people get back into work – is exempt from the minimum wage.
- 6.70 The provisions in **Regulations 51 and 52** exempt people who are participating in Government programmes designed to provide training, work experience or temporary work or to help in seeking or obtaining work from the minimum wage. This exclusion relates just to government programmes and not education or training schemes such as apprenticeships.
- 6.71 **Regulation 53** exempts a person who is required to do work experience, not exceeding a year, as part of a further or higher education course in the UK from the minimum wage.
- 6.72 **Regulation 54** exempts a person doing work under a scheme run by a charity which involves the provision of accommodation to the homeless from the minimum wage.
- 6.73 **Regulation 55** exempts people participating in the EU Lifelong Learning Programmes from the minimum wage.
- 6.74 We will be doing further work on the appropriate way to describe these schemes and current arrangements in the Regulations, but we do not intend to change the policy that is reflected in the 1999 Regulations
- 6.75 **Regulation 56** provides that work done by family members, or those treated as family members, living and working in a family does not constitute work for the purposes of the minimum wage.
- 6.76 **Regulation 57** provides that work by family members, who live in the family home, in relation to a family business is not work for the purposes of the minimum wage.

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<sup>1</sup> This section does not include the exemption of traineeships from NMW, which came into force on 7<sup>th</sup> March. They will be included in the final consolidated regulations.

6.77 The Regulations do not provide an exemption for work experience undertaken outside these public sector frameworks, such as an internship that is arranged between an individual and an employer. In these cases, the general rule is that where someone doing such work experience is a worker, then they are eligible for the minimum wage; if they are not a worker (such as a volunteer), then they are not eligible for the minimum wage. Each case will depend on its individual facts.

## **Part 7 – Records**

6.78 **Regulation 58** reproduces the provisions in the 1999 regulations setting out the records which employers of minimum wage workers must keep. We have made minor drafting changes but no change in policy is intended.

## **Other issues**

6.79 The purpose of this consultation is to clarify and simplify the existing rules and set them out on a consistent basis. In the future it is likely we will consider whether the rules themselves need reviewing. Any such proposal for change is likely to be subject to a future consultation. However, in considering this consolidation there might be areas which occur to you where the rules might benefit from review themselves.

**Question 2:**

Are there other areas of the detailed rules which you consider should be reviewed? Yes/No

If yes, what are these areas and why?

## 7. Transposition schedule

7.1 The following table sets out where the provisions in the draft consolidated regulations can be found in the 1999 Regulations.

<i>Draft consolidated regulations</i>	<i>1999 Regulations</i>
1	1
2	N/A
3	2
4 (1)(a)	11
(b)	13(1)
(c)	13(2)
(d)	13(3)
(2)	14A
5 (1)(a)	13(3)(a)
(b)	13(3)(b)
(2)	13(6)(b)
(3)	13(5)
(4)	2 "Government arrangements"
6	10(1)
7	14(1)
8 (1)	14 (2)
9 (1) (a) – (c); (2)	30 (a) – (c); 31(1)(a)

(1)(d)	10 (2)
(1)(e)	30 (d)
10 (a) – (e)	8 (a) – (e)
(f) – (g)	9 (a) – (b)
(h) – (i)	31(1)(b) (i) – (ii)
(j)	(c) (i) – (ii)
(k)	(d); 2 “allowance”
(l)	(f)
(m)	(e)
(n)	(j)
11(1)	
(2)	31(2); 32(2); 34(2)
12(1)	32(1)(b); 31(1)(g)
12(2)(a) – (f)	33(a) – (e); 35(a) – (e)
13(a)	32(1)(a); 34(1)(a); 31(1)(g), (h)
13(b)	34(1)(b); 31(1)(h)
14(1)	31(1)(i)
14(2)(a)	31(6)
(b)	31(3)
14(3)	31(4)
14(4)	31(5)
15(1) – (2)	37(1) - (2)
16(1) – (3)	36(1) – (2); 36A
17	14(3)

18	29A
19	19(1) –(2)
20	7
21 (1)	4 (1), 4 (2)(a)(c), 4(6)
(2)	4(2)(b)
(3)	4(4)
(4)(a) – (b)	4(3)
(c)	4(5)
(5)	
(6)	2 “performance bonus”
22 (1) – (4)	21(2)(a) – (c)
(5)	21(1)
(6)	
(7)	
23 (1)	21(3)
(2)	21(4)
24	22(2) “calculation year”
25	21(1), 22(2) “the basic hours”
26	22(3)
27	16
28	22(4) – (6)
29(1) - (3)	23(1) – (3)
29(4)	23(4)
30 (a) – (c)	3(a) – (c)

31	20
32(1)	15(1)(a) – (b)
(2)	(1A)
33	19
34(1)(a) – (b)	15(2)(b)
(2)(a) – (b)	15(3)(b); 15(4)
35(1)	15(5)
(2)	(6)
(3), (4)	(7)
36	5
37	24(1)
38	19(1)
39(1)	17(1)
(2)	(1)(a) – (b)
40	17(2)
41(1) (a)	25(1)(a)
(b)	25(1)(b)
(c)	25(1)(c)
(d)	24(2)(b)
(2) (a)	25(2)(a)
(b)(i) – (v)	25(2)(b)(i) – (v)
42(1)	26(3)
(2)	26A (1)
(3)	26A(1), (2)

(4)	26A(3)
(5)	26A(4)
43	26(1) (2)
44	6
45(a) – (b)	27
46	19
47	18(1)
48	18(2)
49(1)(a) – (b)	28(1)
(2)	28(2)
(3)	28(3)
50 (a) – (b)	29(1)(a) – (b)
51	12(5); 2(1) [definition of “Government arrangements”]
52	12(6) (7)
53	12(8) (9A)
54	12(11)(12)
55	12(13) – (16)
56	2(2)
57	(3) (4)
58	38

## 8. Consultation questions

### Question 1:

Do you consider that there are any provisions which do not work or are unclear?

Yes/No

If yes, please explain your reasons.

### Question 2:

Are there other areas of the detailed rules which you consider should be reviewed?

Yes/No

If yes, what are these areas and why

.

## 9. What happens next?

**This consultation will close on 15 September. The Government will publish its response as soon as possible thereafter and within 12 weeks of the consultation closing. We are aiming to lay draft consolidated regulations before Parliament by early 2015 with the regulations coming into force later that year.**

## Annex A: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

### Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone John on 020 7215 1661  
or e-mail to: [angela.rabess@bis.gsi.gov.uk](mailto:angela.rabess@bis.gsi.gov.uk)

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 6).

## Annex B: National Minimum Wage: Consultation on draft Consolidated Regulations response form

You may find it helpful to facilitate responses to hard-copy format consultations. Under each question number a different example of setting out a request for a response is shown – you can decide which are useful to your consultation.

You should still use web response form and point users to this first. Say clearly if the web version is fully interactive or downloadable and include the web address with this response form. You should make the hard copy response form as similar as possible to the web response form.

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 15/09/2014.

Name:

Organisation (if applicable):

Address:

Please return completed forms to:  
 Vibeke Bjornfors  
 National Minimum Wage Policy Team  
 3<sup>rd</sup> Floor  
 1 Victoria Street  
 London  
 SW1H 0ET

Telephone: 020 7215 6424

Email: [vibeke.bjornfors@bis.gsi.gov.uk](mailto:vibeke.bjornfors@bis.gsi.gov.uk)

Please select a box from a list of options below that best describes you as a respondent.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)

	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

**Question 1: Do you consider that there are any provisions which do not work or are unclear?**

Yes

No

If yes, please explain your reasons.

**Question 2: Are there other areas of the detailed rules which you consider should be reviewed?**

Yes

No

If yes, what are these areas and why

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

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