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## Briefing Note

### National minimum wage and accommodation offset

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A note on the national minimum wage (NMW) looking at how to calculate pay and benefits that count towards the NMW, namely accommodation provided to a worker by an employer.

#### Introduction

The NMW is a prescribed minimum hourly rate of pay which employers must legally pay to most of their workers.

In circumstances where the employer is also a landlord of their employee and the employee pays rent, the employer is required to deduct from total remuneration the entire amount of the rent less the accommodation allowance in order to determine if their employee is truly receiving the NMW.

#### Current rates for the NMW

The rates change every April.

Year	25 and over	21 to 24	18 to 20	Under 18	Apprentice
April 2019	£8.21	£7.70	£6.15	£4.35	£3.90

The accommodation offset rate has been set to £7.55 per day, or £52.85 per week, assuming they pay for accommodation seven days per week.

As can be seen below, slightly different rules apply for agricultural workers.

#### How does the accommodation offset work?

In circumstances where the employer is also a landlord of their non-agricultural employee:

1. If the employee receives accommodation for free, the accommodation offset is added on to the value of their gross weekly wage when ascertaining whether they have received the NMW.
2. If the employee has to pay a fee or rent which is below the accommodation offset amount, this has no impact on their wages for the purposes of calculating whether they have received the NMW.
3. If the employee pays rent in excess of the value of the accommodation offset amount, even if at face value the minimum wage has been paid, the employer is required to deduct from total remuneration the entire amount of the rent less the accommodation allowance to ascertain whether the NMW has truly been paid.

## Example

### *Accommodation is charged above the maximum rate*

The UK government, in their [online guidance](#), provide the example of 'Sam'. Sam, an employee, earns £8.24 an hour. Sam is over 25. His wage, before the application of the accommodation offset, is therefore above the NMW.

Sam works 40 hours per week. However, Sam is charged £54.60 per week for accommodation. The accommodation offset is deducted from the £54.60, leaving a balance to be deducted from weekly pay. The resultant number is then divided by the number of hours worked to get the basic hourly wage paid.

In the example given, the result of the rent being charged was to reduce the wages to below the NMW for a worker of his age. Therefore, in situations where ostensibly the NMW is paid but the employee, as a tenant, is charged rent, the results can be surprising.

This can happen even where the rent charged is fair or even subsidised and there is no question of overcharging or any improper motive on the part of the employer.

## More worked examples

### *Accommodation is free:*

Your gardener is a non-agricultural worker who is over 25. They are entitled to a minimum of £8.21 an hour.

The accommodation offset rate for non-agricultural workers is £7.55 per day, or £52.85 per week. They work 40 hours per week, at £8.00 an hour.

Therefore their total gross weekly wage is £320. At present, before the accommodation offset is taken into consideration, they earn below the NMW.

However, as the accommodation is free, the accommodation offset amount is added to, rather than subtracted from, the gross value of their weekly wage.

Gross weekly wage is:  $£320 + £52.85 = £372.85$

Gross hourly rate is:  $£372.85/40 = £9.32$  an hour

In other words, they are in fact receiving more than the NMW.

### *Rent is charged, but it is less than the accommodation offset rate:*

The accommodation offset has no effect.

As a result, using your gardener as an example again, if they received £8.20 an hour, were charged £3.50 per day, or £24.50 per week for their accommodation, this would have no impact on their gross weekly wage for the purposes of calculating whether they have received the NMW.

*Rent is charged over the value of the accommodation offset:*

Using the same example as above, but this time the gardener is paid £8.50 an hour, or £340 per week, ie ostensibly above the NMW, but £10 per day or £70 per week is charged for accommodation:

Gross weekly wage = £340

Accommodation offset per week = £52.85

Accommodation charge per week = £70

Accommodation charge minus accommodation offset = £17.15

Gross weekly wage minus the above = £322.85

Average hourly wage is: £322.85/40 = £8.07

In other words, they are receiving below the NMW.

### Agricultural workers

Agricultural workers are treated slightly differently from conventional employees.

The Scottish Government's [guidance to art 21](#) of the Agricultural Wages (Scotland) Order 2019, which determines the value of the accommodation offset for agricultural workers, states:

The only benefit provided by an employer to a worker which can be counted as part payment of the minimum wage is the provision of a house without charge. The value of this benefit will be £1 per week and this amount may be deducted from the worker's pay even if this would reduce the gross pay to below the statutory minimum.

Our understanding, from a strict reading of the Order and accompanying guidance, is that if the agricultural worker is provided with a house, the accommodation offset of £1 is only provided if they are provided with said house free of charge. If they have to make any contribution at all, that weekly contribution will be deducted from the value of their gross weekly wage for the purposes of calculating whether the national minimum wage is being paid.

The guidance then goes on to say:

Any deduction an employer makes from a worker's wage in respect of accommodation other than a house shall not exceed £7.55 for each day in the week for which living accommodation is provided.

It appears, by contrast, that if the agricultural worker is provided with accommodation other than a house, such as a room in a communal living space, a £7.55 accommodation offset can be added to their wages for the purposes of calculating whether they receive the NMW. But deductions from their wages for this accommodation cannot exceed £7.55.

This note is intended as a brief summary of the national minimum wage and accommodation offset. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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