



Number 5 of 2000

NATIONAL MINIMUM WAGE ACT 2000

REVISED

Updated to 4 October 2011

This Revised Act is an administrative consolidation of the *National Minimum Wage Act 2000*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Insurance (Amendment) Act 2011 (26/2011)*, enacted 30 September 2011, and all statutory instruments up to and including *Civil Law (Miscellaneous Provisions) Act 2011 (Commencement) Order 2011 (S.I. No. 508 of 2011)*, made 4 October 2011, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Social Welfare and Pensions Act 2011* (9/2011)
- *Financial Emergency Measures in the Public Interest Act* (38/2010)
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Prisons Act 2007* (10/2007)
- *Carer's Leave Act 2001* (19/2001)
- *Employment Equality Act 1998* (21/1998)
- *Pensions Act 1990* (25/1990)

All Acts up to and including *Insurance (Amendment) Act 2011* (26/2011), enacted 30 September 2011, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *National Minimum Wage Act 2000 (Section 11) (No. 2) Order 2011* (S.I. No. 331 of 2011)
- *National Minimum Wage Act 2000 (Section 11) Order 2011* (S.I. No. 13 of 2011)
- *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2006* (S.I. No. 667 of 2006)
- *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2005* (S.I. No. 203 of 2005)
- *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2003* (S.I. No. 250 of 2003)
- *National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) (No.2) Order 2000* (S.I. No. 201 of 2000)
- *National Minimum Wage Act, 2000 (Prescribed Courses of Study or Training) Regulations 2000* (S.I. No. 99 of 2000)
- *National Minimum Wage Act, 2000 (Commencement) Order 2000* (S.I. No. 96 of 2000)
- *National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) Order 2000* (S.I. No. 95 of 2000)

All statutory instruments up to and including *Civil Law (Miscellaneous Provisions) Act 2011 (Commencement) Order 2011* (S.I. No. 508 of 2011), made 4 October 2011, were considered in the preparation of this revision.



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REVISED

Updated to 4 October 2011

AN ACT TO PROVIDE FOR THE DETERMINATION, DECLARATION AND REVIEW OF A NATIONAL MINIMUM HOURLY RATE OF PAY FOR EMPLOYEES, THE ENTITLEMENT OF EMPLOYEES TO REMUNERATION FOR EMPLOYMENT AT A RATE NOT LESS THAN OR CALCULATED BY REFERENCE TO THAT NATIONAL MINIMUM HOURLY RATE, THE CALCULATION OF EMPLOYEES' ENTITLEMENTS, THE SETTLEMENT OF DISPUTES RELATING TO SUCH ENTITLEMENTS, THE ENFORCEMENT AND RECOVERY OF WAGES, THE IMPOSITION OF PENALTIES FOR BREACHES OF THIS ACT, THE AMENDMENT OF THE TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994, THE ORGANISATION OF WORKING TIME ACT, 1997, AND THE PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACT, 1984, AND FOR RELATED PURPOSES. [31st March, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Application of Act not restricted by *Employment Equality Act 1998* (21/1998), s. 17(4), as substituted (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 27(2), commenced on enactment.

Compliance with statutory requirements etc.

17.— ...

(4) In relation to discrimination on the age ground, nothing in this Act shall render unlawful any act done in compliance with— ...

(b) the National Minimum Wage Act 2000.

- C2** Application of Act not restricted by *Pensions Act 1990* (25/1990), s. 75(3)(b), as substituted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22(1), S.I. No. 141 of 2004.

Compliance with statutory requirements, etc.

75.— ...

(3) Nothing in this Part renders unlawful any act done in compliance with— ...

(b) the National Minimum Wage Act 2000 , or

...

and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the age ground.

PART I

PRELIMINARY

Short title and commencement.

1.—(1) This Act may be cited as the National Minimum Wage Act, 2000

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor, either generally or with reference to a particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

Annotations**Editorial Notes:**

E1 Power pursuant to s. 1(2) exercised (1.04.2000) by *National Minimum Wage Act, 2000 (Commencement) Order 2000* (S.I. No. 96 of 2000).

2. The 1st day of April, 2000 is hereby appointed as the day on which the *National Minimum Wage Act 2000* (No. 5 of 2000) shall come into operation.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“contract of employment” means—

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with another person to do or perform personally any work or service for that person or a third person (whether or not the third person is a party to the contract),

whether the contract is express or implied and, if express, whether or not it is in writing;

“employee” means a person of any age who has entered into, or works or has worked under, a contract of employment;

“employer”, in relation to an employee, means the person with whom the employee has entered into, or for whom the employee works or has worked under, a contract of employment, and includes a transferee of an undertaking referred to in *section 46*;

“functions” includes powers and duties;

“inspector” means a person appointed under *section 33(1)* as an inspector;

“Minister” means the Minister for Enterprise, Trade and Employment;

“national minimum hourly rate of pay” means the rate of pay declared by order of the Minister under *section 11*;

“pay” means all amounts of payment, and any benefit-in-kind specified in *Part 1* of the *Schedule*, made or allowed by an employer to an employee in respect of the employee’s employment;

“pay reference period”, in relation to an employee, means the period selected under *section 10* by his or her employer;

“premium” means any amount in excess of basic pay payable to an employee in respect of his or her work;

“prescribed” means prescribed by regulations made under this Act by the Minister;

“working hours” has the meaning assigned to it by *section 8*.

(2) A reference in this Act to an employee of an employer shall be construed as a reference to an employee employed by that employer or to whom the employer is liable to pay wages and for that purpose a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the State or the Government and an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee, shall be deemed to be an employee employed by the respective authority, board or committee.

(3) In this Act—

- (a) a reference to any other enactment shall, except to the extent that the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act,
- (b) a reference to a section or Part is a reference to a section or Part of this Act, unless it is indicated that reference to some other enactment is intended,
- (c) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and
- (d) a reference to the *Schedule* is a reference to the Schedule to this Act.

Regulations.

3.—(1) The Minister may make regulations prescribing such matters as may be prescribed under this Act by the Minister, and may make such other regulations as are necessary or expedient for the purpose of giving effect to this Act.

(2) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary.

Annotations

Editorial Notes:

- E2** Power pursuant to subs. (1) exercised (4.04.2000) by *National Minimum Wage Act, 2000 (Prescribed Courses of Study or Training) Regulations 2000* (S.I. No. 99 of 2000).

Laying of orders and regulations before Houses of Oireachtas.

4.—Every order (other than an order made under *section 1(2)*) or regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order or regulation is passed by either House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the order or regulation.

Non-application of Act.

5.—F1[(1)] This Act does not apply to the remuneration of a person who is—

- (a) the spouse^{F2}[, *civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*], father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half-sister of an employer, employed by the employer, or

(b) an apprentice within the meaning of or under the Industrial Training Act, 1967, or the Labour Services Act, 1987.

F3[(2) This Act does not apply to any non-commercial activity or work engaged in by prisoners under the supervision of the governor or person in charge of the prison concerned, including—

(a) any cleaning or kitchen work or other work relating to the operation of the prison;

(b) activity of an educational, training or work experience nature which is intended to prepare prisoners for their re-integration into society;

(c) the production of goods or services which are—

(i) sold or provided for the purpose of raising funds for charitable purposes or providing facilities for prisoners, or

(ii) disposed of or provided without charge or for a nominal charge.]

Annotations

Amendments:

F1 Renumbered (1.05.2007) by *Prisons Act 2007* (10/2007), s. 37, S.I. No. 180 of 2007.

F2 Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 170 and sch. pt. 5, item 20, S.I. No. 648 of 2010.

F3 Inserted (1.05.2007) by *Prisons Act 2007* (10/2007), s. 37, S.I. No. 180 of 2007.

Expenses of
Minister.

6.—Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be approved of by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Provisions in
agreement or
legislation to pay
less than national
minimum hourly
rate of pay are
void.

7.—(1) A provision in a contract of employment (whether made or entered into before or after the commencement of this section) is void in so far as it purports to exclude or limit the operation of any provision of this Act.

(2) A contract or agreement or an enactment in force immediately before the commencement of this section that provides for the entitlement to pay for an employee less favourable than that to be provided in accordance with this Act is hereby modified to the extent necessary to provide that the employee's entitlement after the commencement of this section shall be not less favourable than that to be provided in accordance with this Act.

(3) Nothing in this section shall prevent the inclusion in a contract of employment of a provision more favourable to an employee than an entitlement in accordance with this Act.

PART 2

WORKING HOURS AND PAY REFERENCE PERIOD

Working hours of
employee for pay
reference period.

8.—(1) For the purpose of determining under this Act whether an employee is being paid not less than the minimum hourly rate of pay to which he or she is entitled in accordance with this Act, but subject to *section 9*, "working hours", in relation to an employee in a pay reference period, means—

(a) the hours (including a part of an hour) of work of the employee as determined in accordance with—

- (i) his or her contract of employment,
- (ii) any collective agreement that relates to the employee,
- (iii) any Registered Employment Agreement that relates to the employee,
- (iv) any Employment Regulation Order that relates to the employee,
- (v) any statement provided by the employee's employer to the employee in accordance with section 3(1) of the Terms of Employment (Information) Act, 1994,
- (vi) any notification by the employee's employer to the employee under section 17 of the Organisation of Working Time Act, 1997,
- (vii) section 18 of the Organisation of Working Time Act, 1997, or
- (viii) any other agreement made between the employee and his or her employer or their representatives that includes a provision in relation to hours of work,

or

(b) the total hours during which the employee carries out or performs the activities of his or her work at the employee's place of employment or is required by his or her employer to be available for work there and is paid as if the employee is carrying out or performing the activities of his or her work,

whichever, in any case, is the greater number of hours of work.

(2) "Working hours" under this section shall include—

- (a) overtime,
- (b) time spent travelling on official business, and
- (c) time spent on training or on a training course or course of study authorised by the employer, within the workplace or elsewhere, during normal working hours,

but shall not include—

(i) time spent on standby or on call at a place other than a place of work or training provided by or on behalf of the employer for whom the employee is on standby or on call,

F4[(ii) time spent absent from work on annual leave, sick leave, protective leave, adoptive leave, parental leave, carer's leave under the *Carer's Leave Act, 2001*, while laid-off, on strike or on 'lock-out', or time for which the employee is paid in lieu of notice, or]

(iii) time spent on travelling between an employee's place of residence and place of work and back.

Annotations

Amendments:

- F4 Substituted (2.07.2001) by *Carer's Leave Act 2001* (19/2001), s. 29, commenced on enactment.

Certain employ-
ees to provide
record of working
hours to employ-
er.

9.—(1) Where an employee's working hours are assessed as provided in *section 8(1)* (b) but are not normally controlled by his or her employer, the following shall apply:

- (a) the employee shall keep a written record of his or her working hours during every day he or she is employed during a pay reference period;
- (b) the employee shall give the record to his or her employer as soon as reasonably practicable after the end of the pay reference period;
- (c) if the employee fails to comply with *paragraph (b)*, the working hours of the employee shall be calculated in accordance with *section 8(1) (a)* and the employer shall notify the employee of that circumstance as soon as possible after the expiration of the period, but in any case not later than at the time of receipt by the employee of his or her pay for the working hours concerned.

(2) *Subsection (1)* does not apply to an employee whose average hourly rate of pay for the working hours concerned is likely to be not less than 150 per cent, or such other percentage as may be prescribed, of the national minimum hourly rate of pay.

(3) An employee who provides his or her employer with information in a record of working hours under this section that the employee knows to be false or misleading in a material respect shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

Pay reference
period.

10.—An employer shall select as a pay reference period for the purposes of this Act a period not exceeding one calendar month.

PART 3

NATIONAL MINIMUM HOURLY RATE OF PAY

Declaration and Review of National Minimum Hourly Rate of Pay

National mini-
mum hourly rate
of pay

F5[11.— F6[(1) The Minister shall, by order, declare a national minimum hourly rate of pay for the purposes of this Act of €8.65.]

(2) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).

(3) The Minister may make an order under subsection (2) whether or not a recommendation under section 12 or 13 has been made.

(4) The Minister shall, for the purpose of deciding whether or not to make an order under subsection (2), take account of the following matters:

- (a) changes in earnings during the period since the most recent making of an order under this section;
- (b) changes in currency exchange rates during that period;
- (c) whether during that period—
 - (i) unemployment has been increasing or decreasing, and
 - (ii) employment has been increasing or decreasing;
- (d) the likely effect that the proposed order will have on—
 - (i) levels of employment and unemployment,
 - (ii) the cost of living, and

(iii) national competitiveness; and

(e) where a recommendation has been made under section 12 or 13, that recommendation.

(5) The national minimum hourly rate of pay declared by order under this section may include an allowance in respect of board and lodgings, board only or lodgings only at such rates as are specified in the order.]

Annotations

Amendments:

- F5** Substituted (22.12.2010) by *Financial Emergency Measures in the Public Interest Act 2010* (38/2010), s. 13(a), commenced on enactment.
- F6** Substituted (29.06.2011) by *Social Welfare and Pensions Act 2011* (9/2011), s. 22, commenced on enactment.

Editorial Notes:

- E3** Power pursuant to subs. (1) exercised (1.07.2011) by *National Minimum Wage Act 2000 (Section 11) (No. 2) Order 2011* (S.I. No. 331 of 2011).
- E4** Power pursuant to subs. (1) exercised (1.02.2011) by *National Minimum Wage Act 2000 (Section 11) Order 2011* (S.I. No. 13 of 2011).
- E5** Power pursuant to section exercised (1.01.2007) by *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2006* (S.I. No. 667 of 2006).
- E6** Previous affecting provision: power pursuant to section exercised (1.05.2005) by *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2005* (S.I. No. 203 of 2005), revoked (1.01.2007) by *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2006* (S.I. No. 667 of 2006).
- E7** Previous affecting provision: power pursuant to section exercised (01.02.2004) by *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2003* (S.I. No. 250 of 2003), revoked (1.05.2005) by *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2005* (S.I. No. 203 of 2005).
- E8** Previous affecting provision: power pursuant to section exercised (1.07.2000) by *National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) (No. 2) Order 2000* (S.I. No. 201 of 2000), revoked (1.02.2004) by *National Minimum Wage Act 2000 (National Minimum Hourly Rate of Pay) Order 2003* (S.I. No. 250 of 2003).
- E9** Previous affecting provision: power pursuant to section exercised (31.03.2000) by *National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) Order 2000* (S.I. No. 95 of 2000), revoked (1.07.2001) by *National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) (No. 2) Order 2000* (S.I. No. 201 of 2000).

National economic agreement recommending national minimum hourly rate of pay.

12.—(1) The Minister shall, from time to time in accordance with this section or *section 13*, review the national minimum hourly rate of pay.

(2) Where in the opinion of the Minister there is in existence or proposed a relevant agreement (“national economic agreement”) among economic and social interests in the State which includes a recommendation in relation to the national minimum hourly rate of pay of employees for the duration of the agreement, the Minister shall, within 3 months after being advised of the recommendation, and taking into account the matters referred to in *section 11F7[(4)]*—

(a) accept or vary the recommendation and declare the national minimum hourly rate of pay under *section 11* accordingly or amend the order, or

(b) reject the recommendation.

(3) If the Minister varies or rejects a recommendation under *subsection (2)*, the Minister shall, as soon as practicable, make a statement to the Oireachtas giving his or her reasons for that variation or rejection.

Annotations

Amendments:

- F7** Substituted (22.12.2010) by *Financial Emergency Measures in the Public Interest Act 2010* (38/2010), s. 13(b), commenced on enactment.

Labour Court may recommend national minimum hourly rate of pay where no national economic agreement.

13.—(1) Any organisation claiming to be substantially representative of employees or employers in the State may apply to the Minister for his or her opinion as to whether a relevant national economic agreement exists for the purpose of *section 12*.

(2) Where in the opinion of the Minister there is no relevant national economic agreement as referred to in *section 12* or, if there is such an agreement, it makes no recommendation in relation to the national minimum hourly rate of pay of employees that should obtain for the duration of the agreement, the Minister shall, in writing, advise the applicant accordingly.

(3) Any organisation which the Labour Court is satisfied is substantially representative of employees or employers in the State may separately or jointly, not earlier than 12 months after the Minister has last declared a national minimum hourly rate of pay of employees under *section 11*, request the Labour Court to examine the national minimum hourly rate of pay of employees and make a recommendation to the Minister.

(4) The Labour Court in undertaking an examination as the result of an application under *subsection (3)*, shall consult with such persons, including representatives of employers and employees in the private sector and public sector of the economy, as it thinks appropriate and if it is satisfied that general agreement is reached between the parties as to the appropriate hourly rate of pay of employees, recommend in writing to the Minister that rate accordingly.

(5) If, after the consultations referred to in *subsection (4)*, the Labour Court is satisfied that general agreement between the parties cannot be reached, it may still make a recommendation to the Minister, but in doing so it shall have regard to the F8[matters specified in paragraphs (a), (b), (c) and (d) of *subsection (4)* of *section 11*.]

(a) F9[...]

(b) F9[...]

(c) F9[...]

F10[(5A) A recommendation under *subsection (4)* or (5) shall not be made after the expiration of 13 weeks from the making of the request under *subsection (3)*.]

(6) The procedures of the Labour Court in relation to an application or hearing under this section shall be as determined by the Labour Court.

(7) The Minister shall, within 3 months after receiving a recommendation of the Labour Court under *subsection (4)* or (5), and after taking into account the matters referred to in F11[*section 11(4)*], accept or vary the recommendation and declare the national minimum hourly rate of pay under *section 11* accordingly, amend the order or reject the recommendation.

(8) If the Minister varies or rejects a recommendation under *subsection (7)*, the Minister shall as soon as practicable make a statement to the Oireachtas giving his or her reasons for the variation or rejection.

Annotations

Amendments:

- F8** Substituted (22.12.2010) by *Financial Emergency Measures in the Public Interest Act 2010 (38/2010)*, s. 13(c)(i), commenced on enactment.
- F9** Deleted (22.12.2010) by *Financial Emergency Measures in the Public Interest Act 2010 (38/2010)*, s. 13(c)(ii), commenced on enactment.
- F10** Inserted (22.12.2010) by *Financial Emergency Measures in the Public Interest Act 2010 (38/2010)*, s. 13(c)(iii), commenced on enactment.
- F11** Substituted (22.12.2010) by *Financial Emergency Measures in the Public Interest Act 2010 (38/2010)*, s. 13(c)(iv), commenced on enactment.

Entitlement of Employee to Payment and Sub-minimum Rates

Entitlement to minimum hourly rate of pay.

14.—Subject to *sections 17 and 18—*

(a) an employee who has attained the age of 18 years shall, subject to *sections 15, 16 and 41*, be remunerated by his or her employer in respect of the employee's working hours in any pay reference period, at an hourly rate of pay that on average is not less than the national minimum hourly rate of pay, and

(b) an employee who has not attained the age of 18 years shall be remunerated by his or her employer in respect of the employee's working hours in any pay reference period, at an hourly rate of pay that on average is not less than 70 per cent of the national minimum hourly rate of pay.

Rates of pay during first 2 years of employment after entering employment after, or attaining, age of 18 years.

15.—(1) Subject to *subsection (2) and sections 16, 17 and 18*, a person who—

(a) enters employment for the first time after attaining the age of 18 years, or

(b) having entered into employment before attaining the age of 18 years continues in employment on attaining that age,

shall be remunerated by his or her employer in respect of his or her working hours in any pay reference period at an hourly rate of pay that on average is not less than—

(i) in the case of an employee commencing employment for the first time after attaining the age of 18 years—

(I) in his or her first year after having commenced employment, 80 per cent, and

(II) in his or her second year after having commenced employment, 90 per cent,

(ii) in the case of an employee having entered into employment before attaining the age of 18 years and continuing in employment on attaining that age—

(I) in his or her first year after having attained the age of 18 years, 80 per cent, and

(II) in his or her second year after having attained that age, 90 per cent, of the national minimum hourly rate of pay, notwithstanding that the employee, if he or she has changed his or her employer during the relevant period, may have been remunerated at a higher rate by the previous employer.

(2) In calculating a period of employment for the purpose of *subsection (1)*, any period of employment during which the employee had not attained the age of 18 years shall be ignored.

(3) An employer shall not be liable in a dispute with an employee to whom this section applies as to the applicable rate of pay for the employee if the employer took reasonable steps to obtain detailed information about the employee's employment with any previous employer and paid the employee at an hourly rate in accordance with the information and this section.

(4) This section applies to an employee in circumstances described in *subsection (1) (a) or (b)* whether he or she entered employment, or continued in employment on attaining the age of 18 years, before or after the commencement of this section, but the employee's entitlement to remuneration as provided for in *subsection (1)* shall be only in respect of any period remaining after the commencement of this section of the employee's first and/or second year after so entering employment for the first time or, as the case may be, so attaining the age of 18 years and continuing in employment.

Trainee rates.

16.(1)—Subject to *subsection (3)* and *sections 17* and *18*, where an employee who has attained the age of 18 years undergoes a course of study or training authorised by the employer within the workplace or elsewhere during normal working hours, such courses or training to be prescribed in regulations made by the Minister, the employee shall be remunerated by his or her employer in respect of his or her working hours in any pay reference period at a rate of pay that on average is not less than the following percentages of the national minimum hourly rate of pay:

(a) in respect of the first one-third period (but not exceeding 12 months) of the total study or training period, 75 per cent;

(b) in respect of the second one-third period (but not exceeding 12 months) of the total study or training period, 80 per cent;

(c) in respect of the third one-third period (but not exceeding 12 months) of the total study or training period, 90 per cent. cent.

(2) For the purpose of *subsection (1)*, where a one-third period exceeds 12 months, the next subsequent one-third period shall be deemed to commence on the expiration of the previous period of 12 months.

(3) This section extends to an employee who is undergoing a course of study or training authorised by his or her employer which is subsequently prescribed for the purposes of *subsection (1)* and who—

(a) had not attained the age of 18 years at the time of the prescribing of the course of study or training, or

(b) had attained the age of 18 years at the time of the commencement of the course of study or training (whether or not he or she commenced that course before or after the commencement of this section),

and the date by reference to which the one-third periods of the total study or training period shall be calculated for the purposes of *subsection (1)* as so extended is the date (before or after the commencement of this section) on which the employee's period of study or training actually commenced, but the employee shall be entitled to remuneration at the relevant percentage of the national minimum hourly rate of

pay, as provided for in *subsection (1)*, only in respect of that part of such one-third period or periods remaining after the date on which—

- (i) this section commenced,
- (ii) the course of study or training was or is prescribed, or
- (iii) the employee attained or attains the age of 18 years,

whichever is the later date.

(4) *Subsection (1)* does not apply to an employee who has already undertaken, before or after the commencement of this section, a course of study or training that is similar in purpose or content, while employed by the same or a different employer.

Annotations

Editorial Notes:

- E10** Criteria for course of study or training prescribed for the purposes of section (4.04.2000) by *National Minimum Wage Act, 2000 (Prescribed Courses of Study or Training) Regulations 2000* (S.I. No. 99 of 2000), reg. 3.

Pro-rata entitlement to minimum hourly rate of pay for less than full hour.

17.—The rate of pay that a person is entitled to in accordance with this Part shall be calculated pro-rata in respect of any time that is less than a full hour.

Calculation of Minimum Hourly Rate of Pay

Calculations for purpose of this Part.

18.—(1) Nothing in this Part prevents the deduction from any pay to which an employee is entitled in accordance with this Act, or the payment by an employer, of any amount permitted in accordance with section 5 of the Payment of Wages Act, 1991, or any other enactment or instrument made under an enactment.

(2) No such deductions shall be made or payment allowed for in calculating the hourly rate of pay of an employee for the purpose of determining under this Act whether the employee is being paid not less than the minimum hourly rate of pay to which he or she is entitled in accordance with this Act.

Reckonable and non-reckonable pay components in calculating average hourly rate of pay.

19.—(1) Subject to *section 18*, all the pay of an employee in a specific pay reference period shall be included in calculating the employee's average hourly rate of pay in that period for the purposes of determining under this Act whether an employee is being paid not less than the minimum hourly rate of pay to which he or she is entitled in that period.

(2) Any payments or benefits-in-kind listed in *Part 2* of the *Schedule* are not included as pay of an employee for the purposes of *subsection (1)*.

(3) The Minister may, by regulation, add an item to, delete an item from, or otherwise amend, the *Schedule* but only after consultation with such representatives of employers and employees in the State as the Minister considers appropriate.

(4) An employer shall not, for the purposes of this Act, change a payment or benefit-in-kind listed as a non-reckonable component of pay as set out in *Part 2* of the *Schedule* so that its status becomes that of a reckonable component of pay as set out in *Part 1* of the *Schedule*.

(5) For the purposes of this section, the amount, if any, that shall be allowed for board with lodgings, board only, and lodgings only in calculating the hourly rate of

pay of an employee in a pay reference period shall be the amount declared as such under *section 11*.

Method of calculating employee's average hourly rate of pay.

20.—For the purpose of determining under this Act whether an employee is being paid not less than the minimum hourly rate of pay to which he or she is entitled under this Act in a pay reference period, the gross remuneration of the employee calculated in accordance with *section 19* shall be divided by the total working hours of the employee in the pay reference period calculated under *section 8*.

Payment of amount owed to employee on termination of employment.

21.—To avoid doubt, where the employment of an employee is terminated, the employee shall be paid at not less than the minimum hourly rate of pay to which he or she is entitled in accordance with this Act in respect of the period commencing on the beginning of the pay reference period in which his or her employment was terminated and ending on the date of that termination.

PART 4

RECORDS AND STATEMENT OF AVERAGE HOURLY EARNINGS

Records.

22.(1)—An employer shall keep, at the premises or place where his or her employee works or, if the employee works at 2 or more premises or places, the premises or place from which the activities that the employee is employed to carry on are principally directed or controlled, such records as are necessary to show whether this Act is being complied with in relation to the employee and, subject to *section 23 (5)*, those records shall be retained by the employer for at least 3 years from the date of their making.

(2) An employer who, without reasonable cause, fails to comply with *subsection (1)* shall be guilty of an offence and be liable on summary conviction to a fine not exceeding £1,500.

(3) Without prejudice to *subsection (2)*, where an employer fails to keep records under *subsection (1)* in respect of his or her compliance with a particular provision of this Act in relation to an employee, the onus of proving, in proceedings before a rights commissioner or the Labour Court, that the provision was complied with lies on the employer.

Employee entitled to statement of average hourly rate of pay for pay reference period.

23.—(1) Subject to *subsection (2)*, an employee may request from his or her employer a written statement of the employee's average hourly rate of pay for any pay reference period (other than the employee's current pay reference period) falling within the 12 month period immediately preceding the request.

(2) An employee shall not make a request under *subsection (1)* in respect of any pay reference period during which the hourly rate of pay of the employee was on average not less than 150 per cent calculated in accordance with *section 20*, or such other percentage as may be prescribed, of the national minimum hourly rate of pay or where the request would be frivolous or vexatious.

(3) A request under *subsection (1)* shall be in writing and identify the pay reference period or periods to which it relates.

(4) The employer shall, within 4 weeks after receiving the employee's request, give to the employee a statement in writing setting out in relation to the pay reference period or periods—

(a) details of reckonable pay components (including the value of all forms of remuneration) paid or allowed to the employee in accordance with *Part 1* of the *Schedule*,

- (b) the working hours of the employee calculated in accordance with *section 8*,
- (c) the average hourly pay (including the value of forms of remuneration other than cash payments) actually paid or allowed to the employee, as determined in accordance with *section 20*, and
- (d) the minimum hourly rate of pay to which the employee is entitled in accordance with this Act.

(5) A statement under *subsection (4)* shall be signed and dated by or on behalf of the employer and a copy shall be kept by the employer for a period of 15 months beginning on the date on which the statement was given to the employee.

(6) An employer who, without reasonable excuse, fails to comply with this section or a request under this section, or who provides false or misleading information to an employee in a statement under *subsection (4)* knowing it to be false or misleading, shall be guilty of an offence and be liable on summary conviction to a fine not exceeding £1,500.

PART 5

DISPUTES ABOUT ENTITLEMENT AND ENFORCEMENT

Hearing of Disputes

Disputes about entitlement to minimum hourly rate of pay.

24.—(1) Without prejudice to any other action that might be brought against an employer under this Act or otherwise, but subject to *subsection (2)*, if an employee and his or her employer cannot agree on the appropriate entitlement of the employee to pay in accordance with this Act resulting in an alleged under-payment to the employee, the employee or the employer, or the representative of either of them with their respective consent, may, by notice in writing containing such particulars, if any, as may be prescribed, refer the dispute to a rights commissioner for the rights commissioner's decision.

(2) A dispute cannot be referred to or dealt with by a rights commissioner—

(a) unless the employee—

- (i) has obtained under *section 23* a statement of his or her average hourly rate of pay in respect of the relevant pay reference period, or
- (ii) having requested the statement, has not been provided with it within the time limited by that section for the employer to supply the information, and a period of 6 months (or such longer period, not exceeding 12 months, as the rights commissioner may allow) has not elapsed since that statement was obtained or time elapsed, as the case may be,

or

(b) where, in respect of the same alleged under-payment, the employer is or has been—

- (i) the subject of investigation by an inspector under *section 33* or *34*, or
- (ii) prosecuted for an offence under *section 35*.

(3) As soon as practicable after a dispute is referred to him or her, the rights commissioner shall give to the other party to the dispute a copy of the notice of referral.

(4) An inspector shall advise a rights commissioner, on request by the rights commissioner, as to whether the inspector has investigated or is investigating an alleged under-payment the subject of the dispute.

(5) A rights commissioner shall hear the parties to a dispute and any evidence relevant to the dispute offered by them, and otherwise inform himself or herself about the dispute in such manner as prescribed or, if no manner is prescribed, then as the rights commissioner thinks appropriate.

(6) The Minister may, by regulation, prescribe such matters relating to proceedings of the rights commissioner under this section as the Minister thinks appropriate.

(7) The hearing of a dispute shall not be open to the public.

Prohibition of reduction in hours of work of an employee without a concomitant reduction in duties or amount of work.

25.—(1) Where an employee alleges that he or she is being prejudiced by a reduction in his or her hours of work without a concomitant reduction in duties or amount of work, because of an increased liability of the employer resulting from the passing of this Act or the declaration of a national minimum hourly rate of pay, and the employer, within 2 weeks of being so requested by the employee or the employee's representative with the employee's consent, does not restore the employee's working hours to those obtaining immediately before the reduction, the employer and employee shall, for the purposes of *section 24(1)*, be deemed not to be able to agree on the appropriate entitlement of the employee to pay in accordance with this Act resulting in an alleged underpayment to the employee, and *sections 24 to 32* (except *section 24(2)*), with the necessary modifications, shall apply accordingly.

(2) A dispute cannot be referred to a rights commissioner under *subsection (1)* if a period of 6 months (or such longer period not exceeding 12 months, as the rights commissioner may allow) has elapsed since the employee's hours of work were reduced or alleged to be reduced.

(3) In proceedings under this section in respect of an allegation under *subsection (1)*, the onus lies with the employer to prove that any reduction in hours of work was not for the purpose of avoiding the alleged increased liability referred to in *subsection (1)*.

Decision of rights commissioner.

26.—(1) The rights commissioner shall, as soon as practicable after hearing a dispute, come to a decision on the dispute, advise the parties, in writing, of the decision and give to the Labour Court a copy of that decision.

(2) A decision of the rights commissioner may—

(a) include an award of—

(i) arrears, being the difference between any amount paid or allowed by the employer to the employee for pay and the minimum amount the employee was entitled to be paid or allowed in accordance with this Act in respect of the period to which the dispute relates, and

(ii) reasonable expenses of the employee in connection with the dispute,

(b) require an employer to remedy, within a specified time (not being later than 6 weeks after the date the decision was communicated to the employer) or in a specific manner, any matter, including the payment of any amount, in respect of which the employer is in breach of this Act,

as the rights commissioner considers appropriate.

(3) A rights commissioner shall maintain a register of all decisions made by him or her under this section and shall make the register available for inspection by members of the public during normal office hours.

Appeal against
rights commissioner's
decision.

27.—(1) A party to a dispute who is aggrieved by a decision of a rights commissioner under *section 26* may, within 6 weeks of the date on which the decision was communicated to the party under *section 26(1)*, by written notice of appeal containing such particulars, if any, as may be determined by the Labour Court, appeal to the Labour Court against the decision.

(2) As soon as practicable after receiving a notice of appeal, the Labour Court shall give to the other party to the dispute a copy of the notice.

(3) An appeal under this section shall be in the nature of a rehearing and proceedings in the appeal shall be conducted in such manner as the Labour Court thinks appropriate.

Power of Labour
Court in relation
to evidence.

28.—(1) The Labour Court, in the hearing of an appeal under *section 27*, may take evidence on oath or affirmation and for that purpose may cause to be administered oaths to persons attending as witnesses at the hearing.

(2) A person who, on examination on oath or affirmation authorised under this section, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

(3) The Labour Court may, by notice in writing to a person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to the hearing of an appeal or to produce any documents in his or her possession, custody or control which relate to the matter of the hearing.

(4) A person to whom a notice under *subsection (3)* has been given who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

(5) A document purporting to be signed by the chairperson of the Labour Court and stating that—

(a) a person named in the document was, by notice under *subsection (3)*, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document,

(b) a sitting of the Labour Court was held on that day and at that time and place, and

(c) the person did not attend before the Labour Court in pursuance of the notice or, having so attended, refused to give evidence or refused or failed to produce the document,

shall, in a prosecution for an offence under *subsection (4)*, be evidence of the matters stated, without further proof.

(6) A witness in a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.

Determination of
Labour Court on
appeal.

29.—(1) The Labour Court shall, as soon as practicable after hearing an appeal under *section 27*, determine the appeal by confirming the decision of the rights commissioner or substituting for that decision any decision of its own that the rights commissioner could have made on the hearing of the dispute.

(2) As soon as practicable after determining an appeal under *subsection (1)*, the Labour Court shall give to the parties to the appeal a copy of the determination.

Referral or appeal to High Court on question of law.

30.—(1) The Minister may, at the request of the Labour Court, refer to the High Court for determination a question of law arising in an appeal under *section 27*.

(2) A party to an appeal under *section 27* may appeal to the High Court from a determination of the Labour Court but only on a question of law.

Enforcement

Referral of decision of rights commissioner to Labour Court for determination.

31.—(1) Where a decision of a rights commissioner in relation to a dispute under this Act has not been fully complied with by the employer concerned and the time for bringing an appeal against the decision has expired and no such appeal has been brought or if such an appeal has been brought it has been abandoned, the employee concerned may bring the dispute before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision of the rights commissioner.

(2) The bringing of a dispute before the Labour Court under *subsection (1)* shall be effected by giving to it a notice in writing containing such particulars, if any, as may be determined by the Labour Court.

Enforcement of determination of Labour Court.

32.—(1) A determination of the Labour Court in proceedings under this Act may provide that any matter, including the payment of any amount, in respect of which the employer is in breach of this Act, shall be remedied within a specified time or in a specific manner.

(2) Where a determination of the Labour Court does not specify a date by which a matter in respect of which an employer is in breach of this Act shall be remedied, the determination shall be deemed, for the purposes of this section, to provide that it shall be remedied within 6 weeks from the date on which the determination is communicated to the parties.

(3) If an employer fails to remedy a matter in respect of which he or she is in breach of this Act within the period provided under *subsection (1)* or *(2)*, the Circuit Court shall, on application to it in that behalf—

(a) by the employee concerned,

(b) with the consent of the employee, by a trade union which holds a negotiating licence under the Trade Union Act, 1941, of which the employee is a member, or

(c) by the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances, without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to remedy the matter within the time specified or deemed to be specified in, and in accordance with the terms of, the determination.

(4) The reference in *subsection (3)* to a determination of the Labour Court is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal, if any, against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned, and the reference in *subsection (2)* to the date on which the determination is communicated to the parties shall, in a case where an appeal is abandoned, be construed as a reference to the date of such abandonment.

(5) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, where the order relates to arrears of pay, direct the employer concerned to pay to the employee concerned interest on the arrears at the rate referred to in section 22 of the Courts Act, 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination

of the Labour Court is communicated to the parties and ending on the date of the order.

(6) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, business or occupation.

(7) In proceedings under this section every document purporting to be issued by the Labour Court and sealed with its official seal, is to be received in evidence without further proof.

Inspectors and Inspections

Inspectors and
their powers.

33.—(1) The Minister may, in writing, appoint as many persons as the Minister thinks appropriate to be inspectors for the purposes of this Act.

(2) Subject to this section, an inspector may do all or any of the following things for the purposes of this Act—

(a) enter at all reasonable times any premises or place where the inspector believes on reasonable grounds that—

(i) an employee is employed in work; or

(ii) the work that an employee is employed to do is directed or controlled,

(b) make such examination or enquiry as may be necessary for ascertaining whether this Act is being complied with in respect of an employee employed in those premises or that place or an employee whose work is directed or controlled from the premises or place,

(c) require the employer of an employee, or the representative of the employer, to produce to the inspector any records the employer is required to keep and inspect and take copies of entries in the records (including in the case of information in a non-legible form a copy of or an extract from that information in a permanent legible form),

(d) require any person the inspector believes on reasonable grounds to be or to have been an employee or the employer of an employee to furnish such information as the inspector may reasonably request,

(e) examine with regard to any matters under this Act any person the inspector has reasonable cause to believe to be or to have been an employer or employee and require the person to answer such questions (other than questions tending to incriminate the person) as the inspector may put relative to those matters and to sign a declaration of the truth of the answers.

(3) An inspector shall not, except with the consent of the occupier, enter a private dwelling (other than a part of the dwelling used as a place of work) unless he or she has obtained a warrant from the District Court under *subsection (6)* authorising the entry.

(4) Where an inspector in attempting to exercise his or her powers under this section is prevented from entering any premises, he or she may apply under *subsection (6)* for a warrant authorising the entry.

(5) An inspector, where he or she considers it necessary to be so accompanied, may be accompanied by a member of the Garda Síochána when exercising a power conferred on an inspector by this section.

(6) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that information required by an inspector under this section is held on any premises or any part of premises,

the judge may issue a warrant authorising an inspector accompanied by other inspectors or a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production, if so requested, of the warrant, to enter the premises (if need be by the use of reasonable force) and exercise all or any of the powers conferred on an inspector under *subsection (2)*.

(7) A person who—

- (a) obstructs or impedes an inspector in the exercise of any of the powers conferred on an inspector under this section,
- (b) refuses to produce a record which an inspector lawfully requires the person to produce,
- (c) produces or causes to be produced, or knowingly allows to be produced, to an inspector a record which is false or misleading in a material respect, knowing it to be false or misleading,
- (d) gives to an inspector information which is false or misleading in a material respect knowing it to be false or misleading, or
- (e) fails or refuses to comply with a lawful requirement of an inspector under *subsection (2)*,

shall be guilty of an offence.

(8) Every inspector shall be furnished by the Minister with a certificate of his or her appointment and, on applying for admission to any premises or place for the purposes of this Act, shall, if requested by a person affected, produce the certificate or a copy of the certificate to that person.

Investigation of
allegation or
matter by inspec-
tor.

34.—(1) Where an employee alleges that his or her employer has failed to remunerate the employee to an extent required in accordance with this Act, the employee or the employee's representative with the consent of the employee, may request an inspector to investigate the allegation.

(2) An inspector may, on the request or on behalf of an employee under *subsection (1)*, or of the inspector's own motion if the inspector believes that an under-payment of pay to an employee has been made, investigate the allegation or matter and, where the investigation is on the request or behalf of an employee, advise the employee of the outcome of the investigation.

(3) Subject to *subsection (5)*, an inspector shall, on the request for advice under *section 39* by the Minister, investigate the matter on which the advice is sought and advise the Minister accordingly.

(4) Where after investigating an allegation or matter under this section an inspector is satisfied that an offence under this Act has been committed, or when so requested by the Minister, the inspector shall furnish a report on his or her investigation to the Minister.

(5) An inspector shall not investigate an allegation or matter—

- (a) in relation to a dispute which has been referred to a rights commissioner under *section 24* (and shall cease any investigation he or she has commenced on becoming aware of any such referral); or
- (b) involving payments made or alleged entitlements arising more than 3 years before the date of the inspection or proposed inspection.

(6) A rights commissioner shall, at the request of an inspector, inform the inspector as to whether a particular dispute has been referred to the rights commissioner under *section 24*.

Offences and Enforcement

Offence to refuse or fail to pay minimum hourly rate of pay.

35.—(1) An employer who refuses or fails to remunerate an employee for each working hour or part of a working hour in any pay reference period at an hourly rate of pay that on average is not less than the employee's entitlement to the minimum hourly rate of pay in accordance with this Act shall be guilty of an offence.

(2) Where the employer charged is found guilty of an offence under this section, evidence may be given of any like contravention on the part of the employer in respect of any period during the 3 years immediately preceding the date of the offence.

(3) In proceedings against a person under *subsection (1)*, it shall lie with the person to prove that he or she has paid or allowed pay of not less than the amount he or she was required to pay or allow in accordance with this Act.

Prohibition of victimisation of employee by employer.

36.—(1) An employer shall not cause or suffer any action prejudicial to an employee for the employee having—

- (a) exercised or having proposed to exercise a right under this Act,
- (b) in good faith opposed or proposed to oppose by lawful means an act which is unlawful under this Act, or
- (c) become, or in future will or might become, entitled in accordance with this Act to remuneration at an hourly rate of pay that on average is not less than the national minimum rate of pay, or a particular percentage of that rate of pay.

(2) Dismissal of an employee in contravention of *subsection (1)* shall be deemed to be an unfair dismissal of the employee within the meaning and for the purposes of section 6(1) of the Unfair Dismissals Acts, 1977 to 1993 (but without prejudice to sections 2 to 5 of the Unfair Dismissals Act, 1977, except that it is not necessary for the employee to have at least one year's continuous service with the employer and that Act shall apply as if the Worker Protection (Regular Part-Time Employees) Act, 1991, were repealed in relation to the number of hours an employee is normally expected to work for the purposes of that Act) and those Acts, with the necessary modifications, shall apply accordingly.

(3) Where an employee alleges he or she has suffered an action prejudicial to the employee in contravention of *subsection (1)* and the employer, within 2 weeks of being so requested by the employee or the employee's representative with the employee's consent, does not restore the employee to conditions of employment he or she enjoyed immediately before suffering the alleged prejudicial action, the employer and the employee shall, for the purposes of *section 24(1)*, be deemed not to be able to agree on the appropriate entitlement of the employee to pay in accordance with this Act, resulting in an alleged underpayment to the employee, and *sections 24 to 32* (except *section 24(2)*), with the necessary modifications, shall apply accordingly.

(4) A dispute cannot be referred to a rights commissioner in pursuance of *subsection (3)* if a period of 6 months (or such longer period not exceeding 12 months, as the rights commissioner may allow) has elapsed since the employer's alleged prejudicial action referred to in *subsection (1)*.

Penalties and proceedings.

37.—(1) A person guilty of an offence under this Act for which no penalty, other than under this section, is provided shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months, or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 3 years, or to both the fine and the imprisonment.

(2) If the offence of which a person was convicted is continued after conviction, the person shall be guilty of a further offence on every day on which the act or omission constituting the offence continues, and for each such further offence the person shall be liable on summary conviction to a fine not exceeding £200 or on conviction on indictment to a fine not exceeding £1,000.

(3) Where an offence under this Act is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person (as well as the body corporate) shall be guilty of an offence and be liable to be proceeded against and punished as if guilty of the offence committed by the body corporate.

(4) Proceedings in relation to a summary offence under this Act may be prosecuted by the Minister.

(5) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under this Act may be instituted within 12 months from the date of the discovery of the offence.

Defence for employer in proceedings.

38.—It shall be a defence in proceedings for an offence under this Act by an employer if the employer proves that he or she exercised due diligence and took reasonable precautions to ensure that this Act and any relevant regulations made under it were complied with by the employer and any person under his or her control.

Civil proceedings.

39.—(1) Where an employer has not paid to an employee an amount of pay to which the employee is entitled in accordance with this Act and, in respect of that amount no dispute has been referred to a rights commissioner under *section 24* or allegation referred to an inspector under *section 34* for investigation, and, in the opinion of the Minister, it is not reasonable in the circumstances to expect the employee, or the representative of the employee with the employee's consent, to either refer a dispute or allegation, or to institute civil proceedings for the recovery of the amount, the Minister may request an inspector to advise the Minister whether or not, in the inspector's opinion, civil proceedings should be instituted by the Minister on behalf and in the name of the employee.

(2) After considering the advice of an inspector requested under *subsection (1)*, the Minister may, in his or her absolute discretion, institute or refrain from instituting civil proceeding in the name of the employee for the recovery of the amount.

(3) In proceedings under *subsection (2)* the employee shall not be liable for costs but the court before which the proceedings are brought may order that any costs that might otherwise have been awarded against the employee shall be paid by the Minister.

(4) The power given by *subsection (2)* shall not be in derogation of any right of an employee to institute civil proceedings on the employee's own behalf.

Employee's entitlements not affected by conditions of contract of employment contravening certain Acts.

40.—(1) Where a term or condition of the contract of employment concerned contravenes the Taxes Consolidation Act, 1997, or the Social Welfare Acts, the employee concerned shall, notwithstanding the contravention, be entitled to redress under this Act for any under-payment of an amount of pay to which he or she would otherwise be entitled under this Act.

(2) Where, in proceedings under this Act, it is shown that a term or condition of a contract of employment contravenes the Taxes Consolidation Act, 1997, or the Social Welfare Acts, the rights commissioner, the Labour Court, an inspector or the Circuit Court, as the case may be, shall notify the Revenue Commissioners or the Minister for Social, Community and Family Affairs, as may be appropriate, of the matter.

PART 6

MISCELLANEOUS

Employer in
financial difficul-
ty.

41.—(1) The Labour Court may, in accordance with this section, exempt an employer from the obligation to pay an employee or number of employees entitlements otherwise payable to them in accordance with *section 14*, not being entitlements to which *section 14(b)*, *15* or *16* apply.

(2) An exemption under *subsection (1)* shall be for a period not exceeding one year and not less than 3 months, and while it remains in force the employer accordingly need not so comply.

(3) The Labour Court shall not exempt an employer under *subsection (1)* if the employer has previously ever been granted an exemption under that subsection.

(4) An employer or employer's representative with the employer's consent may, in the manner and form approved by the Labour Court, apply to the Labour Court for an exemption under *subsection (1)*.

(5) On receiving an application under *subsection (4)* the Labour Court shall convene a hearing of parties to the application and shall give its decision on the application in writing to the parties.

(6) Before granting an exemption under *subsection (1)*, the Labour Court must be satisfied that—

(a) where the employer employs more than one employee—

- (i) the employer has entered into an agreement with the majority of the employees or the representative of the majority of the employees, or
- (ii) there is a collective agreement covering the majority of the employees in respect of whom the exemption is sought,

whereby the employees or their representative consent to—

(I) the employer making the application, and

(II) abide by any decision on the application that the Labour Court may make,

(b) where the employer makes an application in respect of a single employee, the employer has entered into an agreement with the employee or the representative of the employee whereby the employee or his or her representative consents to the employer making the application and to abide by any decision on the application that the Labour Court may make,

and that, in either case, the employer cannot pay an entitlement under *section 14* to an employee to whom the agreement relates due to the employer not having the ability to pay or being unlikely to be able to pay, to the extent that, if the employer were compelled to pay—

- (i) the employee would be likely to be laid-off employment with the employer, or
- (ii) the employee's employment would be likely to be terminated.

(7) A decision of the Labour Court to exempt an employer under *subsection (1)* shall specify

- (a) the name and employment positions occupied by employees to whom the exemption applies;
- (b) the duration of the exemption; and
- (c) the average hourly rate of pay to be paid to the employee or employees during the period of the exemption, and the employee or employees shall be entitled to be paid at not less than that rate accordingly.

(8) Where during the period of an exemption under this section a new employee replaces an employee to whom the exemption relates, the employer may pay the new employee the hourly rate of pay specified by the Labour Court in respect of the former employee and shall, as soon as practicable, notify the Labour Court in writing of the employment of the new employee.

(9) The Labour Court shall establish its own procedures for the hearing of applications, and in relation to incidental matters to be dealt with, under this section.

(10) The Labour Court shall maintain a register of all decisions under this section and shall make the register available for examination by members of the public at such place and reasonable times as it thinks fit.

(11) No appeal shall lie from a decision of the Labour Court under this section except to the High Court on a question of law.

(12) For the purposes of calculating an employee's entitlement to a redundancy payment under the Redundancy Payments Acts, 1967 to 1991, any exemption under this section shall be ignored and the calculation made as if the employee had been paid the national minimum hourly rate of pay to which he or she was otherwise entitled under this Act, for the period of the exemption.

(13) A payment in lieu of notice to an employee in accordance with the Minimum Notice and Terms of Employment Acts, 1973 to 1991, shall not have regard to any exemption under this section and the payment in lieu of notice shall be made to the employee as if the employee had been paid the national minimum hourly rate of pay to which he or she was otherwise entitled under this Act, for the period of the exemption.

(14) A payment from the Social Insurance Fund in accordance with section 6(2)(a)(i) of the Protection of Employees (Employers' Insolvency) Acts, 1984 to 1991, shall not have regard to any exemption under this section and any such payment shall be made to the employee as if the employee had been paid the national minimum hourly rate of pay to which he or she was otherwise entitled under this Act, for the period of the exemption.

Act not to derogate from certain provisions of or under Industrial Relations Acts, 1946 to 1990.

42.— The provisions of this Act are in addition to and not in derogation of the Industrial Relations Acts, 1946 to 1990, or—

- (a) Employment Regulation Orders, and the enforcement of such Orders, made under those Acts, or
- (b) Registered Employment Agreements, and the enforcement of such Agreements, on the register under those Acts on the commencement of this section,

except that where a minimum hourly rate of pay in accordance with this Act is a greater amount than the minimum rate of pay prescribed under an Employment Regulation Order or such a Registered Employment Agreement, the employee's entitlement to pay in accordance with this Act shall prevail.

Repercussive claims.

43.—(1) The Labour Relations Commission or the Labour Court shall not recommend in favour of or endorse a claim or a part of a claim for the improvement in the pay of an employee who has access to any of its services if in the view of the Labour Relations Commission or the Labour Court, as the case may be, the claim or part of the claim is based on the restoration of a pay differential between the employee and another employee who has secured or is to secure an increase in pay as the result of the passing of this Act.

(2) The Labour Court shall not by Employment Regulation Order give effect to a proposal which could be submitted to it by a Joint Labour Committee under section 42 of the Industrial Relations Act, 1946, or section 48 of the Industrial Relations Act, 1990, if, in the view of the Labour Court, the proposal is based on or partly on the restoration of a pay differential between an employee and another employee who has secured or is to secure an increase in pay as the result of the passing of this Act.

(3) The Labour Court shall not register an employment agreement under section 27 of the Industrial Relations Act, 1946, or vary such an agreement under section 28 of that Act if, in the view of the Labour Court, the agreement or variation, or part of the agreement or variation, is based on or partly on the restoration of a pay differential between an employee and another employee who has secured or is to secure an increase in pay as the result of the passing of this Act.

(4) No conciliation or arbitration scheme in the public sector shall recommend in favour or endorse a claim or a part of a claim for the improvement in the pay of an employee who is subject to the scheme if the claim or part of the claim is based on the restoration of a pay differential between the employee and another employee who has secured or is to secure an increase in pay as the result of the passing of this Act.

Amendment of section 3 of Terms of Employment (Information) Act, 1994.

44.— Section 3(1) of the Terms of Employment (Information) Act, 1994, is amended by the substitution of the following for paragraph (g):

“(g) the rate or method of calculation of the employee’s remuneration and the pay reference period for the purposes of the *National Minimum Wage Act, 2000*,

(ga) that the employee may, under *section 23* of the *National Minimum Wage Act, 2000*, request from the employer a written statement of the employee’s average hourly rate of pay for any pay reference period as provided in that section,”.

Amendment of section 39 of Organisation of Working Time Act, 1997.

45.—Section 39 of the Organisation of Working Time Act, 1997, is hereby amended by the insertion in the table to subsection (2) of the following after “Minimum Notice and Terms of Employment Acts, 1973 to 1991”:

“*National Minimum Wage Act, 2000*

Parental Leave Act, 1998”.

Change of ownership of business.

46.— Without prejudice to the generality of the European Communities (Safeguarding of Employee’s Rights on Transfer of Undertakings) Regulations, 1980 (S.I. No. 306 of 1980), on the transfer of an undertaking within the meaning of those regulations the transferee shall become liable to an employee in the undertaking to whom this Act applies in respect of any matter under this Act, in the same manner and to the same extent as the transferor immediately before the transfer, as if the transferee has originally entered into the relevant contract of employment or other agreement with the employee.

Annotations**Editorial Notes:**

- E11** The *European Communities (Safeguarding of Employee's Rights on Transfer of Undertakings) Regulations 1980* (S.I. No. 306 of 1980) mentioned above were amended by *European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) (Amendment) Regulations 2000* (S.I. No. 487 of 2000) and both were revoked and replaced (11.04.2003) by *European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003* (S.I. No. 131 of 2003).

Extension of
Protection of
Employees
(Employers' Insol-
vency) Act, 1984.

47.—Section 6 of the Protection of Employees (Employers' Insolvency) Act, 1984, is hereby amended—

(a) in subsection (2)(a)—

(i) by the deletion of “and” from the end of subparagraph (x),

(ii) in subparagraph (xi), by the substitution for “Employment Equality Act, 1977.” of “Employment Equality Act, 1977,” and

(iii) by the insertion of the following after subparagraph (xi):

“(xii) any amount which an employer is required to pay by virtue of the *National Minimum Wage Act, 2000*, being an amount by reference to which proceedings have been instituted against the employer for an offence under *section 35* of the *National Minimum Wage Act, 2000*, and

(xiii) any amount which an employer is required to pay by virtue of—

(I) a decision of a rights commissioner under *section 26* of the *National Minimum Wage Act, 2000*, or

(II) a determination of the Labour Court under *section 29* of the *National Minimum Wage Act, 2000*,

and made, in any case, not earlier than the commencement of the relevant period.”,

(b) in subsection (4)(c), by the insertion of the following after subparagraph (vi):

“(vii) A payment shall not be made under this section in respect of an amount to which a decision of a rights commissioner under *section 26* of the *National Minimum Wage Act, 2000*, relates unless—

(I) in case an appeal from the decision to the Labour Court is brought under *section 27* of that Act, the appeal is withdrawn, or

(II) in case there is no such appeal, the time for bringing such an appeal has expired.

(viii) A payment shall not be made under this section in respect of an amount to which a determination under *section 29* of the *National Minimum Wage Act, 2000*, relates unless—

(I) in case an appeal from the determination is brought to the High Court under *section 30* of that Act, the appeal is withdrawn, or

(II) in case there is no appeal, the time for bringing an appeal has expired.”,

and

(c) in subsection (9), in the definition of “the relevant date”, by the substitution for “(x) or (xi) of subsection (2)(a)” of “(x), (xi) or (xiii) of subsection (2)(a)”.

Service of documents.

48.—(1) The service of a notice or other document on a person for the purpose of or in relation to a proceeding under this Act may be effected by delivering it to the person or by sending a copy by prepaid registered post in an envelope addressed to the person at his or her last known residence or place of business in the State.

(2) In the case of a company to which the Companies Act, 1963, applies, service may be effected by delivering the document to, or by sending it by registered prepaid post in an envelope addressed to the company at its registered office.

(3) In the case of a body corporate to which *subsection (2)* does not apply or an unincorporated body of persons, the service may be effected by sending a copy of the notice or other document by registered prepaid post in an envelope addressed to the body at any place in the State where the body conducts its business or in such other manner as an originating summons may be served on such a body under the Rules of the Superior Court.

Provisions relating to winding-up and bankruptcy.

49.—(1) There shall be included among the debts which, under section 285 of the Companies Act, 1963, are, in the distribution of the assets of a company being wound-up, to be paid in priority to all other debts, all arrears of pay payable under this Act by a company to an employee, and that Act shall have effect accordingly

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all arrears of pay payable under this Act by the bankrupt or arranging debtor.

(3) Formal proof of the debts to which priority is given under *subsection (1)* or *(2)* shall not be required except in cases where it may otherwise be provided by rules or general orders made under the respective Act.

Recovery of money due to employee.

50.—(1) Without prejudice to *section 39*, any amount of money due to an employee from his or her employer under or in accordance with this Act shall be recoverable by the employee as a simple contract debt in a court of competent jurisdiction and action for its recovery may be instituted and maintained on behalf of the employee by the employee’s trade union, if the employee is a member.

(2) Where in a prosecution for an offence under this Act it appears to a court that money is due by an employer to an employee, and the employer is convicted of that offence, the court may, if it is satisfied that the employer is liable to pay to his or her employee an amount of money, order, in addition to any penalty which it may impose pursuant to this Act, that the employer pay the amount to the employee.

Section 19.

SCHEDULE

RECKONABLE AND NON-RECKONABLE PAY COMPONENTS IN CALCULATING AVERAGE HOURLY
RATE OF PAY

PART 1 — RECKONABLE COMPONENTS

1. Basic salary.
2. Shift premium.
3. Piece and incentive rates, commission and bonuses, which are productivity related.
4. The monetary value of board with lodgings or board only or lodgings only, not exceeding the amount, if any, prescribed for the purposes of this item.
5. The amount of any service charge distributed to the employee through the payroll.
6. Any payments under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection).
7. Any amount in respect of any of the above items advanced in a previous pay reference period that relates to the specific pay reference period.
8. Any amount in respect of any of the above items earned in the specific pay reference period and paid in the next pay reference period or, where *section 9(1)(b)* applies, paid in the pay reference period in which the record of working hours is received or due to be received by the employer or the pay reference period immediately after that.

PART 2 — NON-RECKONABLE COMPONENTS

1. Overtime premium.
2. Call-out premium.
3. Service pay.
4. Unsocial hours premium.
5. Any amount distributed to the employee of tips or gratuities paid into a central fund managed by the employer and paid through the payroll.
6. Public holiday premium, Saturday premium and Sunday premium, where any such holidays or days are worked.
7. Allowances for special or additional duties including those of a post of responsibility.
8. Any payment of expenses incurred by the employee in carrying out his or her employment, including travel allowance, subsistence allowance, tool allowance and clothing allowance.
9. On-call or standby allowance.
10. Any payments for or in relation to a period of absence of the employee from the workplace, such as sick pay, holiday pay, payment for health and safety leave under the Maternity Protection Act, 1994, or pay in lieu of notice, but not including a

payment under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection).

11. Any payment by way of an allowance or gratuity in connection with the retirement or resignation of the employee or as compensation for loss of office.
12. Pension contributions paid by the employer on behalf of the employee.
13. Any payment referable to the employee's redundancy.
14. Any advance of a payment referred to in *Part 1* of this Schedule in the specific pay reference period relating to a subsequent pay reference period.
15. Any payment-in-kind or benefit-in-kind, except board with lodgings, lodgings only or board only.
16. Any payment to the employee otherwise than in his or her capacity as an employee.
17. Any payment representing compensation for the employee, such as for injury or loss of tools and equipment.
18. An amount of any award under a staff suggestion scheme.
19. Any loan by the employer to the employee, other than an advance payment referred to in *paragraph 7* in *Part 1* of this Schedule.