

GUERNSEY STATUTORY INSTRUMENT

2010 No. 78

**The Minimum Wage (Administrative Provisions)
(Guernsey) Regulations, 2010**

Made

27th July, 2010

Coming into operation

1st October, 2010

ARRANGEMENT OF REGULATIONS

1. Pay reference periods to be one month or shorter.
2. How to determine hourly rate of remuneration.
3. Calculation of total remuneration in a pay reference period.
4. No benefits in kind other than accommodation and meals to be treated as remuneration.
5. Types of payments not to be treated as remuneration.
6. Reductions to be made when calculating total remuneration.
7. Interpretation.
8. Citation.
9. Commencement.

THE GUERNSEY
LEGISLATIVE
COURT
OF THE
GUERNSEY

The Minimum Wage (Administrative Provisions) (Guernsey) Regulations, 2010

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by section 2 of the Minimum Wage (Guernsey) Law, 2009^a and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Pay reference periods to be one month or shorter.

1. The pay reference period for determining the hourly rate of remuneration of a worker is –

- (a) where the worker is paid by reference to a period shorter than one calendar month, that shorter period, and
- (b) in any other case, one calendar month.

How to determine hourly rate of remuneration.

2. For the purposes of the Law, the hourly rate at which a person is to be regarded as remunerated by his employer in respect of his work in a pay reference period shall be determined by dividing A by B, where –

- (a) “A” is the worker’s total remuneration in that period calculated in accordance with regulation 3, and
- (b) “B” is the total number of hours the worker works for his employer in that period.

Calculation of total remuneration in a pay reference period.

3. (1) Subject to regulations 4, 5, and 6, the total remuneration of a

^a Order in Council No. I of 2010.

Calculation of total remuneration in a pay reference period.

3. (1) Subject to regulations 4, 5, and 6, the total remuneration of a worker in a pay reference period shall be calculated by adding the total of payments specified in paragraph (2) to the amount (if any) forming part of the worker's remuneration under the Minimum Wage (Accommodation and Food Offsets) (Guernsey) Regulations, 2010.

(2) The following payments, where made by an employer to a worker in his capacity as a worker, are to be treated as forming part of the worker's remuneration in a pay reference period ("**Pay Reference Period A**")—

- (a) any payment made in Pay Reference Period A,
- (b) any payment made in the following pay reference period ("**Pay Reference Period B**"), in respect of Pay Reference Period A (whether in respect of work or not), and
- (c) any payment made later than the end of Pay Reference Period B, in respect of work done in Pay Reference Period A, if—
 - (i) the worker is obliged to complete a record of the amount of work done,
 - (ii) the worker is not entitled to payment until the completed record has been submitted to the employer,
 - (iii) the worker has failed to submit this record earlier than the fourth business day before the end of Pay Reference Period B, and

- (iv) the payment is made in the pay reference period in which the record is submitted or in the pay reference period following that.

(3) In paragraph (2)(c)(iii), "**business day**" means any day other than –

- (a) a Saturday, a Sunday, Christmas Day or Good Friday, or
- (b) a day appointed as a public holiday by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^b.

No benefits in kind other than accommodation and meals to be treated as remuneration.

4. Except as provided by the Minimum Wage (Accommodation and Food Offsets) (Guernsey) Regulations, 2010, no benefit in kind (even if a money value is attached to it) shall be treated as forming part of a worker's remuneration.

Types of payments not to be treated as remuneration.

5. The following shall not be treated as forming part of a worker's remuneration in a pay reference period –

- (a) any payment to be included in the total remuneration of the worker for an earlier pay reference period, under regulation 3(2)(b) or (c),
- (b) any payment made in respect of periods when the worker was absent from work or engaged in taking

^b Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 507; and Vol. XXXV (1), p. 370.

industrial action,

- (c) any payment by way of an allowance other than an allowance attributable to the performance of the worker in carrying out his work,
- (d) any payment representing amounts paid by customers by way of a service charge, tip, gratuity or cover charge, in whatever form these amounts are paid, and whether or not these amounts are paid to the worker through the payroll,
- (e) any payment by way of –
 - (i) an advance under an agreement for a loan, or
 - (ii) an advance of wages,
- (f) any payment by way of a pension, by way of an allowance or gratuity in connection with the worker's retirement or as compensation for loss of office,
- (g) any payment referable to the worker's redundancy,
- (h) any payment –
 - (i) of an award made by a court or tribunal, or
 - (ii) to settle proceedings that have been or might be brought before a court or tribunal,

other than the payment of an amount due under the

worker's contract, and

- (i) any payment by way of an award under a suggestions scheme.

Reductions to be made when calculating total remuneration.

6. (1) In calculating a worker's total remuneration in a pay reference period, the following deductions, subject to paragraph (2), shall be subtracted from that total remuneration –

- (a) any deduction made in respect of the worker's expenditure in connection with his employment, and
- (b) any deduction made for the employer's own use and benefit (and accordingly not attributable to any amount paid or payable by the employer to any other person on behalf of the worker).

(2) Nothing in paragraph (1) requires or authorises any of the following deductions to be subtracted from that total remuneration –

- (a) a deduction in respect of the worker's conduct, or any other event, for which that worker is contractually liable (whether together with any other worker or not),
- (b) a deduction on account of a prior agreement for a loan or for an advance of wages,
- (c) a deduction made to recover an accidental overpayment of wages made to the worker, or
- (d) a deduction in respect of the purchase by the worker of

any share, other security, or share option, or of any share in a partnership.

(3) Where the payments specified in regulation 3(2) include premium rate payments, the total remuneration of the worker shall be subtracted by the total amount by which those premium rate payments exceed the payments that would have been made to the worker had the worker been paid at his lowest usual rate of remuneration.

(4) In paragraph (3), "premium rate payments" means payments made in respect of time worked by the worker at higher than the lowest usual rate of remuneration payable to the worker, for example, payments made at overtime rates.

Interpretation.

7. (1) In these Regulations, "the Law" means the Minimum Wage (Guernsey) Law, 2009.

(2) Unless the context requires otherwise, references in these Regulations to any enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of these Regulations in the Islands of Guernsey, Herm and Jethou as it applies to the interpretation of a Guernsey enactment.

(4) For the avoidance of doubt, unless the context requires otherwise, an expression used in these Regulations has the same meaning as in the Law.

Citation.

8. These Regulations may be cited as the Minimum Wage

^c Ordres en Conseil Vol. XIII, p. 355.

(Administrative Provisions) (Guernsey) Regulations, 2010.

Commencement.

9. These Regulations come into force on the 1st October, 2010.

Dated this 27th day of July, 2010



Deputy CARLA McNULTY BAUER

Minister of the Commerce and Employment Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations set out how to determine a worker's hourly rate of remuneration in a pay reference period, in order to determine whether his employer is meeting the minimum wage requirements.

Regulation 1 provides that the pay reference period for determining the hourly rate of remuneration is one month, or shorter if the worker is paid by reference to a shorter period.

Regulation 2 sets out how to calculate the hourly rate of remuneration of a worker, by reference to his total remuneration and hours actually worked.

Regulation 3 specifies how to calculate the total remuneration of a worker in a pay reference period, and what forms part of his total remuneration.

Regulation 4 forbids any benefits in kind, other than those provided for in the Minimum Wage (Accommodation and Food Offsets) (Guernsey) Regulations, 2010 being counted as part of total remuneration.

Regulation 5 describes payments to the worker that should not be counted as part of his total remuneration.

Regulation 6 sets out deductions that should not be counted as part of total remuneration, subject to certain exceptions. It also provides for premium rates of pay (for example, overtime rates) to be discounted when calculating a worker's total remuneration.

Regulation 7 is the interpretation provision, and regulations 8 and 9 set out the title and commencement date, respectively, of these regulations.