

NTF Information Sheet - The National Minimum Wage/National Living Wage and the Accommodation Offset

April 2022

Where the employer provides accommodation some of the value of that can count towards the National Minimum Wage or National Living Wage (referred to here as NMW or NLW). This figure is set yearly by Government (£8.70 a day /£60.90 a week) as at April 2022 and is called the accommodation offset.

This means that there is a limit to what you can charge for accommodation depending on the employee rate of pay or a limit to how much you can take into account for free accommodation when calculating the NMW pay.

If you get this wrong you may be inadvertently underpaying your employees and if found in breach you would be liable to pay the employees any arrears and be fined a penalty by HMRC.

A brief overview is that an employee working a 40 hour week at the National Living Wage (age 23 and over) of £9.50 per hour must be paid a minimum of £380.00. If you then deducted £70 a week for their accommodation, you would be underpaying them for NLW purposes as the maximum you could deduct is £60.90 to still pay the NLW. With the accommodation deduction they are only on £9.27 per hour : $£380.00 - £70 + £60.90 = £370.90 / 40 = £9.27$ per hour.

However, the same employee being paid £400 a week, the £70 deduction would not bring them below the NLW of £9.50 ($£400 - £70 = £330$ plus offset of £60.90 = £390.90 which is £9.77 per hour).

If the same employee was paid £320 plus free accommodation, then their NLW pay is £320 + the offset of £60.90, so £380.90 per week which is £9.52 and as such above the NLW.

This is the briefest of explanations and there are many nuances to it which are explained in more detail in the following guidance.

1. What is the accommodation off set?

The provision of accommodation by the employer is the only benefit in kind that can count towards a worker's national minimum wage pay. There is a limit to the amount that an employer providing accommodation can count towards national minimum wage pay. As explained above, that limit is called the "accommodation offset".

The National Living Wage and National Minimum Wages are set each April by the Government and the current rates (April 2022) are:

Worker aged 23 and over	£9.50
Adult Worker under 21 - 22	£9.18
Young Worker (18 – 20)	£6.83
16 and 17 year olds	£4.81

2. How much is it?

The accommodation offset is calculated at a rate of £8.70 per day for each day that the employer makes the accommodation available to the worker in the reference period. The maximum figure for a week is £60.90.

The rate of the offset is designed as a protective measure by the Low Pay Commission to discourage employers from recouping the minimum wage paid to a worker by levying excessive accommodation charges. The Low Pay Commission does not seek to reflect the cost to the employer or the actual value of renting accommodation to the worker.

3. When does it apply?

The accommodation offset provisions will apply whenever an employer provides accommodation to the worker.

4. What if the accommodation is provided free of charge?

When accommodation is provided free of charge, the notional value of the accommodation offset counts towards the national minimum pay so the effect may be that a worker's contractual pay can be less than the NMW.

5. Can an employer charge more than the accommodation offset for accommodation?

Yes, but the employer must ensure that the worker is not paid less than the National Minimum Wage once the accommodation offset is taken into account. Any sum charged in excess of the offset will reduce a worker's pay for national minimum wage pay purposes (see example below).

If the cost to the employer of providing the accommodation is less than the deduction being made from the employee's gross salary for costs made good, then the difference between the two is a taxable benefit either as a benefit in kind or a pecuniary benefit. Where this is the situation, the employer should take advice from their accountant or other professional adviser as to how to treat this benefit.

6. What about charging for gas and electricity?

If the employer deducts from the worker's wages for gas and electricity, that amount must be included in the daily allowance currently set at £8.70 per day. If the worker is responsible for paying the utility companies direct, the accommodation offset rules do not apply.

7. When is accommodation provided by the employer?

This is very wide – see this point 7 and point 8 below. The employer will be considered as providing accommodation in all the following circumstances whether or not the accommodation is let by the employer or a third party:

- the accommodation is provided in connection with the worker's contract of employment; or
- a worker's continued employment is dependant upon occupying particular accommodation.

8. Where accommodation is offered on an optional basis does the accommodation offset apply where the worker takes up the offer of accommodation?

The accommodation offset will apply whenever the employer is providing the accommodation regardless of whether the worker can choose whether or not to occupy the accommodation. So, even if the provision of accommodation is optional, where the worker chooses to accept the offer, the accommodation offset will apply.

Where the employment is not dependant upon the worker occupying the accommodation, the employer may be considered to be providing accommodation where:

- the employer is the worker's landlord either because he owns the property or because he is subletting the property or
- the employer and the landlord are part of the same group of companies or are companies trading in association
- the employer's and the landlord's businesses have the same owner or business partners, directors or shareholders in common or
- the employer or an owner, business partner, shareholder or director of the employer's business receives a monetary payment and/or some other benefit from the third party acting as landlord to the workers.

9. When can an employer deduct rent from a worker's pay?

The employer needs to have a relevant provision in the worker's contract or if the worker must first give his written consent or agreement to the deduction. Any deductions from pay and the purpose for which they are deducted must be set out on the wage slip.

10. Where can employers obtain further advice?

The following Government website has a calculator for checking that the National Minimum Wage is being paid.

<https://www.gov.uk/am-i-getting-minimum-wage>

The rates in this example are correct as at 1st April 2022.

Example 1 – Wage plus free accommodation

A worker is entitled to be paid the national minimum wage at age 21- 22 rate (£9.18 per hour). He is paid £9.18 an hour for a 40 hour week and accommodation is provided without charge by his employer 7 days a week.

Gross weekly pay £9.18 x 40 hours = £367.20

Rent charged = £0

To calculate if he is being paid the national minimum wage pay:

Identify the applicable notional offset £8.70 per day x 7 days = £60.90

Add the applicable notional offset £60.90 to his gross weekly pay : £367.20 + £60.90 = £428.10

Calculate his hourly rate by dividing pay by hours worked £428.10 / 40 = £10.70

For national minimum wage purposes only, the worker's hourly rate is £10.70. He is being paid more than the national minimum wage.

Example 2 – Wage plus free accommodation

A worker is entitled to be paid the national minimum wage at the age 21- 22 rate (£9.18 per hour). He is paid £9.00 an hour for a 40 hour week and accommodation is provided without charge by his employer 7 days a week. £9.00 is below the current national minimum wage main rate.

Gross weekly pay £9.00 x 40 = £360.00

Rent charged = £0

To calculate if he is being paid the national minimum wage pay:

Identify the applicable notional offset £8.70 per day x 7 days = £60.90

Add the applicable notional offset £60.90 to his gross weekly pay : £360.00 + £60.90 = £420.90

Calculate his hourly rate by dividing pay by hours worked £420.90 / 40 = £10.52.

For national minimum wage purposes only, the worker's hourly rate is £10.52 as the value of the accommodation has increased the pay rate for national minimum wage purposes and the worker is being paid above the national minimum wage.

Example 3 – Wage with accommodation deduction

A worker is entitled to be paid the national minimum wage at the age 21 -22 rate of £9.18 per hour. He is being paid at the rate of £380.00 for a 40 hour week. Accommodation is provided by his employer 7 days a week who deducts £70.00 a week from his wages for rent.

Gross weekly pay £380.00 which is £9.50 an hour Rent charged = £70.00

To calculate national minimum wage pay: Identify the applicable offset : $£8.70 \times 7 = £60.90$

Calculate the amount charged in excess of the accommodation offset – this is £9.10 (£70 charged - £60.90 offset)

Subtract the excess from gross pay to calculate national minimum wage pay $£380.00 - £9.10 = £370.90$

Find his hourly rate by dividing national minimum wage pay by the hours worked: $£370.90 / 40$ hours = £9.27

For national minimum wage purposes the worker's hourly rate is £9.27 which is above the national minimum wage of £9.18 (age 21/22).

Example 4 – Wage with accommodation deduction

A worker is entitled to be paid national minimum wage at the adult under 23 rate of £9.18 per hour. He is being paid at the rate of £367.20 for a 40 hour week. Accommodation is provided by his employer 7 days a week who deducts £75.00 a week from his wages for rent.

Gross weekly pay £367.20 (£9.18 per hour) Rent charged = £75.00.

To calculate national minimum wage pay: Identify the applicable offset : $£8.70 \times 7 = £60.90$

Calculate the amount charged in excess of the accommodation offset – this is £14.10 (£75 actually charged - £60.90 offset)

Subtract the excess from gross pay to calculate national minimum wage pay $£367.20 - £14.10 = £353.10$

Find his hourly rate by dividing national minimum wage pay by the hours worked: $£353.10 / 40$ hours = £8.82 per hour.

For national minimum wage purposes the worker's hourly rate is £8.82 despite the worker being paid £9.18 per hour. The rent charged that is in excess of the accommodation offset brings his pay below the national minimum wage. The worker is being paid 0.36p per hour below the national minimum wage and the employer must increase his hourly rate from £8.82 to £9.18 (age 21/22 rate) which means paying the worker £9.54 per hour if the deduction of £75 is to be continued.

Wage offset and the treatment of absences and time work against the National Minimum Wage.

Where a worker is paid solely according to the numbers of hours he is at work, the work is time work.

Normally when an employer provides accommodation to a worker and charges for that accommodation, the amount of the charge which exceeds the accommodation offset will reduce the worker's national minimum wage pay. Special rules apply when a time worker has been absent from work and the following apply:

- the employer charges for accommodation by making a deduction from the worker's pay or by accepting payment from the worker and
- a time worker (see above) has been absent from work, for example, because of holiday or sickness and
- has been paid at least the national minimum wage for the hours for which he has been absent and
- the hours he actually works are less than they would normally be in the pay reference period because he has been absent and
- the deduction or charge the employer makes for accommodation does not increase because of the worker's absence from work.

If these conditions apply, the deduction or payment for accommodation has to be adjusted before applying the accommodation offset in accordance with the following formula: the deduction or payment is multiplied by the number of hours the worker actually worked. That total is then divided by the total number of hours the worker would have worked (including any hours he actually worked) if he had not been absent.

Only the amount of the adjusted deduction or payment, which exceeds the accommodation offset will reduce the worker's national minimum pay.

On the following pages are examples of this complicated formula:

Example – time worker absent from work and paid during absence

Normal week (not absent)

A time worker is entitled to be paid national minimum wage at £9.18 per hour (age 21/22) . He is paid at £9.30 an hour for a 40 hour week. Accommodation is provided by the employer 7 days a week who deducts £65 from his wages for rent.

Gross weekly pay $£9.30 \times 40 \text{ hours} = £372.00$

Rent charged = £65.00

To calculate the National Minimum Wage pay

Identify the applicable offset: $£8.70 \times 7 = £60.90$

Calculate the amount charged for accommodation in excess of the accommodation offset - this is $£65 - £60.90 = £4.10$

Subtract the excess from the gross pay to calculate the time worker's national minimum wage pay in a normal week - $£372.00 - £4.10 = £367.90$.

The worker's hourly rate in a normal week is $£367.90/40 = £9.19$ which is above the national minimum wage for his age group.

Week when same worker absent

The following week, the same time worker is absent for 3 days because he is ill. He is still paid £372.00 as this is his company's sickness payment policy.

Special rules apply in these circumstances:

Number of hours normally worked 40 hours

Number of hours actually worked 19 hours

Weekly pay remains £372.00

Worker's pay for the time he actually worked is $19 \times £9.30 = £176.70$

Rent charged remains at £65.00.

The applicable offset remains at £60.90.

The amount charged for accommodation in excess of the accommodation offset does not though remain as £4.10. The following adjustment needs to be made:

Multiply the rent charged by the number of hours the time worker actually worked: $65 \times 19 = 1235$

Divide this by the number of hours he would have worked had he not been absent $1235 / 40 = 30.87$

This adjusted figure is used in place of the rent actually charged to calculate the amount charged for accommodation in excess of the accommodation offset: $£60.90 - £30.87 = £30.03$

To calculate the national minimum wage paid:

A time worker's pay for the national minimum wage purposes does not include pay he has received for the time when he has been absent from work. The worker's pay for the time he actually worked is £176.70.

Subtract the excess from the pay the worker received for the time he actually worked from the adjusted figure in respect of the accommodation offset to calculate the worker's national minimum wage pay in that week: $£176.70 - £30.87 = £145.83$.

The worker's hourly rate in the week he has been absent is $£145.83 / 19$ hours worked = £7.67 For national minimum wage purposes the worker has been paid £7.67 which under the national minimum wage pay.

Same worker absent but not paid

If the worker is not paid for the three days he is absent the special rules to adjust the amount of the accommodation charge will not apply.

Weekly pay : $£9.30 \times 19 = £176.70$

Rent charged £65.00.

To calculate the national minimum wage pay

Identify the applicable offset $£8.70 \times 7 = £60.90$.

The amount charged for accommodation in excess of the accommodation offset is £4.10 ($£65 - £60.90$).

Subtract the excess from gross pay to calculate the national minimum wage pay in a normal week $£176.70 - £4.10 = £172.60$.

Worker's hourly rate for the week is $£172.60 / 19$

For national minimum wage purposes, the worker's hourly rate is £9.08 despite the worker being paid £9.30 per hour. The rent charged in excess of the accommodation offset brings his pay below the national minimum wage and the employer must increase the hourly rate from for that week.