

PAY AND CONDITIONS

- Pay (going rates)
- National Minimum Wage (NMW)
- Agricultural Wages
- Working Time Regulations
- Salaries paid from overseas
- Allowances for NMW calculations
- Allowances for 'going rate' calculations
- Commission-based earnings
- Registration and licensing
- Deductions from salary

What to do if?

- The Risk Assessment Grid is checked
- The salary details, including allowances, is given as a net figure on the application form
- The salary is less than that indicated on the occupation sheet or on the Connexions Website
- The salary indicated on the application form is a range rather than a specific figure
- The worker is not going to be paid the NMW
- The worker is going to work, on average, more than 48 hours per week
- The salary is being paid from an overseas company that has no direct link with the UK-based employer
- The salary includes allowances that are not part of a guaranteed salary package
- The salary includes allowances that would not normally be paid to a resident worker and the application is not an Intra Company Transfer (ICT)
- The salary to be paid includes commission, bonuses and/or on target earnings
- The worker does not have the requisite registration or licensing
- The employer does not have the requisite registration or licensing
- The employer proposes to make deductions from the worker's salary that would not normally be taken from similarly employed resident workers
- The pay and conditions meet the criteria

Pay (going rates)

The pay and other conditions of employment should at least be equal to those normally given to a resident worker doing similar work. The salary details, including allowances, on the application form should be given as gross figures and gross figures should be recorded on GLOBE. The occupation sheets and the Connexions Website give a good guide as to what most resident workers receive doing particular jobs. Caseworkers should only accept salaries that are at least equal to those indicated. More information about conditions of employment can be found on the DBERR website <http://www.berr.gov.uk/employment/pay/index.html>

National Minimum Wage (NMW)

Most people who work in the UK have a right to the National Minimum Wage (NMW). The NMW is the minimum amount of pay to which workers aged 18 and over are entitled. Applications offering salaries below the NMW should normally be refused, particularly where the salary remains below NMW after a certain element of any accommodation allowance has been added. This is because such pay does not comply with UK legislation. It cannot therefore also reflect the going rate for the job.

Caseworkers should be aware, however, that certain organisations are exempt from paying the NMW, for example voluntary organisations or the armed forces. For help with NMW calculations please [click here](#). Further details on who qualifies for exemption can be obtained from the DBERR website

<http://www.berr.gov.uk/employment/pay/national-minimum-wage/index.html>

Agricultural Wages

Under the SBS arrangements caseworkers need to ensure that posts for Mushroom Processors will receive a salary that complies with the levels set out by the Agricultural Wages Board (AWB).

On 01/10/2007, the minimum agricultural wages for England and Wales increased as follows:

In England and Wales mushroom pickers come under the Agricultural Wages Order (AWO) and should be paid as Basic Trainee at Grade 1 worker level. This category is a default category where by the job/worker doesn't fit in to the other categories i.e. works with machinery, livestock or has/needs a qualification and it is governed by the workers contract.

The AWO rates for SBS mushroom pickers are £5.52 per hour for normally contracted hours. An overtime rate of £8.28 per hour applies for all hours worked in excess of normal contracted hours.

Weekly Rates of £215.28 apply to any worker who is contractually required to work 39 hours each week.

Rates for Scotland from October 2007:

£5.52 per hour for the first 26 weeks of employment rising to £5.96 per hour thereafter.

Rates for Northern Ireland from April 2007:

Age 18 – 21 £4.60 per hour

Age 22 & over - £5.52 per hour for the first 40 weeks of employment rising to £5.70 per hour thereafter.

Pay and Conditions

Working Time Regulations

In the UK, under the Working Time Regulations, there is a legal limit to the average number of hours most employers can expect their workers to work each week. Caseworkers should ensure that overseas nationals are not going to be required to work more than 48 hours per week on average. Caseworkers should note, however, that some occupations, such as junior doctors, are subject to different working time regulations. Further details can be found on the DBERR website <http://www.dti.gov.uk/employment/holidays/index.html>

Salaries paid from overseas

Caseworkers should ensure that where salaries are going to continue to be paid by their overseas-based employer, a company with a direct link with the UK-based employer, they are at least equal to those paid to resident workers doing similar work and satisfying NMW legislation (DBERR have confirmed that such workers **are** covered by this legislation).

Allowances for NMW calculations

Where the salary quoted in the application form does not meet the NMW caseworkers can take into account an accommodation allowance of £30.10 per week for full time workers and £4.30 per day or 61 pence per hour for part time workers. Caseworkers should note however that these offsets differ in Scotland and Northern Ireland when AWB rates apply. For more information on AWO offsets, caseworkers should email the Policy Team mailbox.

Where the accommodation allowance is totally disposable, non-deductible and guaranteed to the overseas national (i.e. they are free to do with it as they wish) then all the accommodation allowance, and only this allowance, can be added to the salary when considering if NMW is met.

Where the accommodation allowance is not disposable, deductible or not guaranteed to the overseas national (i.e. a hotel is provided for them or a house is provided with rent paid) then only up to £1565.20 per annum can be added to the salary when considering if NMW is met.

To check whether the salary offered to an overseas national still meets the National Minimum Wage requirements following a deduction by the employer for accommodation please [click here](#) for the NMW calculator

Allowances for ‘going rate’ calculations

When assessing salaries against ‘going rates’, all allowances, whether disposable or not, can be taken into account provided:

- They are a guaranteed part of the salary package and are similar to those normally paid to resident workers doing similar work; or
- They are given to ICT workers who are also being paid their overseas salary and are a guaranteed part of their salary package.

Commission-based earnings

Caseworkers should only take into account salaries that are guaranteed to be paid by the employer. Any sum indicated on the application form as being commission, on target earnings or bonuses should be discounted when assessing going rate.

Registration and licensing

Caseworkers should check the relevant occupation sheet to see if a worker is required to be registered with any regulatory body or have any particular license. The employer may also be required to have appropriate registration or licensing. See [establishing the employer](#) guidance or [occupation sheets](#) for further information.

Deductions from salary

Caseworkers should ensure that any deductions from the worker’s salary are similar to those deducted from the salaries of similarly employed resident workers.

What to do if?

The Risk Assessment Grid is checked - If the box is checked by the Executive Officer (EO) who pre-sifted the case, doubt has arisen regarding the worker’s salary being the going rate for the job. Caseworkers should ensure that all the above relevant checks have been carried out fully. In some cases the EO will have given comments and any instructions should be carried out.

[\[Back to what to do if?\]](#)

The salary details, including allowances, is given as a net figure on the application form – If it is clear that the salary details on the application form are given

B&C internal guidance – website version 5.0

as net figures, the caseworker should ask the employer or their representative to give the gross salary details i.e. before any deductions are made. The enquiry can be made by telephone but the caseworker should ask for written confirmation of the gross figures. If this information is not forthcoming, and the net figures do not indicate the going rate for the job is met, the application should be refused and the letter should include an explanation that we are unable to assess whether the worker will be paid the going rate for the job. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The salary is less than that indicated on the occupation sheet or on the Connexions website – If after the caseworker has taken into account any pro-rata calculations necessary, currency conversion calculations and taken into account any acceptable allowances, and the total salary package falls below that indicated on the occupation sheet or on the Connexions website, the application should fall for refusal. The refusal letter should include P85C. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The salary indicated on the application form is a range rather than a specific figure – If the employer has indicated that they guarantee to pay, for example, £16,000 to £20,000, caseworkers should seek written confirmation of the exact sum the employer will guarantee to pay the worker before deductions (excluding any allowances). If this information is not forthcoming, and the lower figure does not indicate the going rate for the job, the application should be refused and the letter should include an explanation that we are unable to assess whether the worker will be paid the going rate for the job. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The worker is not going to be paid the NMW – If the worker is not going to be paid in accordance with NMW legislation, the application should be refused on grounds of not meeting NMW and the employment not being in accordance with the UK legislation. The refusal letter should include paragraph P85J. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The worker is going to work, on average, more than 48 hours per week – Where an employer indicates that they expect the worker to work for more than 48 hours per week on average and the occupation is not subject to different working time regulations, caseworkers should seek written confirmation from the overseas national, via the employer, that they are happy to opt out of the WTR legislation. (Please note that employers cannot force anyone to opt out of the WTR legislation.) If this information is not forthcoming, the application should be refused and the letter should indicate that the

B&C internal guidance – website version 5.0

application does not comply with UK WTR legislation. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The salary is being paid from an overseas company that has no direct link with the UK-based employer – In cases where the overseas company and the UK-based employer are not linked by common ownership, or are linked by means of a contractual or trading arrangement, caseworker should check thoroughly whether the overseas national is going to be an employee of the UK-based employer, whether there is a genuine vacancy for an employee in the UK **and** whether UK (Tax, NI, NMW etc.) legislation is being complied with. If the caseworker is not satisfied that each of these parts of the criteria is being complied with, the application should be refused. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The salary includes allowances that are not part of a guaranteed salary package – Caseworkers should discount any allowances that are not part of a guaranteed salary package. If, when allowances are discounted, a salary falls below NMW or the going rate for the job, the application should be refused and the letter should include either paragraph P85J or P85C. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The salary includes allowances that would not normally be paid to a resident worker and the application is not an ICT - The pay and other conditions of employment should at least be equal to those normally given to a resident worker doing similar work. If the salary includes allowances that would not normally be paid to resident workers and the application is not an ICT, the allowances should be discounted. If discounting allowances means that the salary falls below NMW or the going rate for the job, the application should be refused and the letter should include either paragraph P85J or P85C. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The salary to be paid includes commission, bonuses and/or on target earnings - Caseworkers should discount any sum that is not part of a guaranteed salary package. If, when such sums are discounted, a salary falls below NMW or the going rate for the job, the application should be refused and either paragraph P85J or P85C included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

B&C internal guidance – website version 5.0

The worker does not have the requisite registration or licensing – Caseworkers should check the relevant occupation sheet which should indicate whether an application can be approved conditionally or should be refused on the grounds of not complying with UK legislation. Where exceptional approval is required in order to obtain registration, the approval letter should include an adapted paragraph P70H.

[\[Back to what to do if?\]](#)

The employer does not have the requisite registration or licensing – The application should be refused on the grounds that the employer is not complying with UK legislation. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The employer proposes to make deductions from the worker's salary that would not normally be taken from similarly employed resident workers – By making deductions from the salary of the overseas worker that would not normally be taken from a similarly employed resident worker, the employer is imposing less favourable conditions on the employment of the overseas national than he/she would on a resident worker. The application, therefore, should be refused. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The pay and conditions meet the criteria – Continue with the caseworking process.

[\[Back to what to do if?\]](#)