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STATUTORY INSTRUMENTS

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**1998 No. 1833**

**The Working Time Regulations 1998**

**PART II**

**RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME**

**Payment in respect of periods of leave**

**16.**—(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under [<sup>F1</sup>regulations 13, 13A and 15B], at the rate of a week's pay in respect of each week of leave.

[<sup>F2</sup>(1A) The hourly rate of pay in respect of any period of annual leave to which a worker is entitled under regulation 15B is determined according to the formula—

$A \div B$

where—

A is the week's pay mentioned in paragraph (1); and

B is the average number of hours worked by the worker in each week used to calculate A.]

(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3) [<sup>F3</sup>, the supplementary provisions in paragraphs (3ZA) to (3ZG)] [<sup>F4</sup>and the exception in paragraph (3A)].

(3) The provisions referred to in paragraph (2) shall apply—

(a) as if references to the employee were references to the worker;

(b) as if references to the employee's contract of employment were references to the worker's contract;

(c) as if the calculation date were the first day of the period of leave in question; <sup>F5</sup>...

(d) as if the references to sections 227 and 228 did not apply;

[<sup>F6</sup>(da) as if, in the case of entitlement under regulations 13 and 15B, sections 223(3) and 234 did not apply;]

[<sup>F7</sup>(e) subject to the exception in sub-paragraph (f)(ii), as if in sections 221(3), 222(3) and (4), 223(2) and 224(2) and (3) references to twelve were references to—

(i) in the case of a worker who on the calculation date has been employed by their employer for less than 52 complete weeks, the number of complete weeks for which the worker has been employed, or

(ii) in any other case, 52; and

(f) in any case where section 223(2) or 224(3) applies as if—

(i) account were not to be taken of remuneration in weeks preceding the period of 104 weeks ending—

(aa) where the calculation date is the last day of a week, with that week, and

- (bb) otherwise, with the last complete week before the calculation date; and
- (ii) the period of weeks required for the purposes of sections 221(3), 222(3) and (4) and 224(2) was the number of weeks of which account is taken.]

[<sup>F8</sup>(3ZA) In the case of entitlement under regulations 13 and 15B the following types of payments are to be included when determining the amount of a week’s pay for the purposes of this regulation—

- (a) payments, including commission payments, which are intrinsically linked to the performance of tasks which a worker is obliged to carry out under the terms of their contract;
- (b) payments for professional or personal status relating to length of service, seniority or professional qualifications;
- (c) other payments, such as overtime payments, which have been regularly paid to a worker in the 52 weeks preceding the calculation date.

(3ZB) To the extent that the types of payment mentioned in paragraph (3ZA) would not otherwise be accounted for in a calculation of a week’s pay under sections 221 to 224 of the 1996 Act (as those sections apply for the purposes of this regulation), those types of payment are to be included by calculating the average weekly amount of those payments payable in the relevant period and adding it to the amount of a week’s pay arrived at under those sections.

(3ZC) In the case of a worker who on the calculation date has been employed by their employer for less than 52 complete weeks, the “relevant period” is the number of complete weeks for which the worker has been employed.

(3ZD) In the case of a worker who on the calculation date has been employed by their employer for 52 or more complete weeks, the “relevant period” is the period of 52 weeks ending—

- (a) where the calculation date is the last day of a week, with that week, and
- (b) otherwise, with the last complete week before the calculation date.

(3ZE) In calculating the average weekly amount of payments for the purposes of paragraph (3ZB), no account is to be taken of any weeks during the relevant period in which—

- (a) no remuneration was payable to the worker; or
- (b) a worker was, for any amount of time, on sick leave or statutory leave.

(3ZF) If, in a case falling within paragraph (3ZD), any weeks are discounted under paragraph (3ZE), earlier weeks shall be taken into account so as to bring the number of weeks to 52 (or as close to 52 as possible).

(3ZG) For the purposes of paragraph (3ZF) no account is to be taken of remuneration in weeks preceding the period of 104 weeks ending—

- (a) where the calculation date is the last day of a week, with that week, and
- (b) otherwise, with the last complete week before the calculation date.]

[<sup>F9</sup>(3A) In any case where applying sections 221 to 224 of the 1996 Act subject to the modifications set out in paragraph (3) gives no weeks of which account is taken, the amount of a week’s pay is not to be determined by applying those sections, but is the amount which fairly represents a week’s pay having regard to the considerations specified in section 228(3) as if references in that section to the employee were references to the worker.

(3B) For the purposes of paragraphs (3) [<sup>F10</sup>, (3ZA) to (3ZG)] and (3A) “week” means, in relation to a worker whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other worker, a week ending with Saturday.]

(4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract (“contractual remuneration”) [F11 (and paragraph (1) does not confer a right under that contract)].

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

#### **Textual Amendments**

- F1** Words in [reg. 16\(1\)](#) substituted (1.1.2024) by [The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023 \(S.I. 2023/1426\)](#), regs. 1(2), **3(8)(a)**
- F2** [Reg. 16\(1A\)](#) inserted (1.1.2024) by [The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023 \(S.I. 2023/1426\)](#), regs. 1(2), **3(8)(b)**
- F3** Words in [reg. 16\(2\)](#) inserted (1.1.2024) by [The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023 \(S.I. 2023/1426\)](#), regs. 1(2), **3(8)(c)**
- F4** Words in [reg. 16\(2\)](#) inserted (6.4.2020) by [The Employment Rights \(Employment Particulars and Paid Annual Leave\) \(Amendment\) Regulations 2018 \(S.I. 2018/1378\)](#), regs. 1, **10(2)**
- F5** Word in [reg. 16\(3\)\(c\)](#) omitted (6.4.2020) by virtue of [The Employment Rights \(Employment Particulars and Paid Annual Leave\) \(Amendment\) Regulations 2018 \(S.I. 2018/1378\)](#), regs. 1, **10(3)(a)**
- F6** [Reg. 16\(3\)\(da\)](#) inserted (1.1.2024) by [The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023 \(S.I. 2023/1426\)](#), regs. 1(2), **3(8)(d)**
- F7** [Reg. 16\(3\)\(e\)\(f\)](#) inserted (6.4.2020) by [The Employment Rights \(Employment Particulars and Paid Annual Leave\) \(Amendment\) Regulations 2018 \(S.I. 2018/1378\)](#), regs. 1, **10(3)(b)**
- F8** [Reg. 16\(3ZA\)-\(3ZG\)](#) inserted (1.1.2024) by [The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023 \(S.I. 2023/1426\)](#), regs. 1(2), **3(8)(e)**
- F9** [Reg. 16\(3A\)\(3B\)](#) inserted (6.4.2020) by [The Employment Rights \(Employment Particulars and Paid Annual Leave\) \(Amendment\) Regulations 2018 \(S.I. 2018/1378\)](#), regs. 1, **10(4)**
- F10** Words in [reg. 16\(3B\)](#) inserted (1.1.2024) by [The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023 \(S.I. 2023/1426\)](#), regs. 1(2), **3(8)(f)**
- F11** Words in [reg. 16\(4\)](#) inserted (8.1.2015) by [The Deduction from Wages \(Limitation\) Regulations 2014 \(S.I. 2014/3322\)](#), regs. 1(1), **3**

#### **Modifications etc. (not altering text)**

- C1** [Reg. 16](#) applied (1.4.2024) by [The Agricultural Wages \(Wales\) Order 2024 \(S.I. 2024/390\)](#), arts. 1, **36(2)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Working Time Regulations 1998, Section 16.