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STATUTORY INSTRUMENTS

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**2015 No. 621**

**The National Minimum Wage Regulations 2015**

**PART 5**

**Hours Worked for the Purposes of the National Minimum Wage**

**CHAPTER 1**

**Determining the Hours of Work**

**Hours of work for determining whether the national minimum wage has been paid**

**17.** In regulation 7 (calculation to determine whether the national minimum wage has been paid), the hours of work in the pay reference period are the hours worked or treated as worked by the worker in the pay reference period as determined—

- (a) for salaried hours work, in accordance with Chapter 2;
- (b) for time work, in accordance with Chapter 3;
- (c) for output work, in accordance with Chapter 4;
- (d) for unmeasured work, in accordance with Chapter 5.

**Hours where payment due on submission of a record**

**18.** If the worker is only entitled to payment for hours of work when a record of the hours has been given to the employer, then the hours of work in the pay reference period do not include hours of work in respect of which that record has not been submitted.

**Hours spent training**

**19.—(1)** In this Part, references to “training” include hours when the worker is—

- (a) attending at a place other than the worker’s normal place of work, when the worker would otherwise be working, for the purpose of receiving training that has been approved by the employer;
- (b) travelling, when the worker would otherwise be working, between a place of work and a place where the worker receives such training;
- (c) receiving such training at the worker’s normal place of work.

(2) In paragraph (1), hours when the worker would “otherwise be working” include any hours when the worker is attending at a place or travelling where it is uncertain whether the worker would otherwise be working because the worker’s hours of work vary either as to their length or in respect of the time at which they are performed.

**Hours spent travelling**

**20.** In this Part, references to “travelling” include hours when the worker is—

- (a) in the course of a journey by a mode of transport or is making a journey on foot;
- (b) waiting at a place of departure to begin a journey by a mode of transport;
- (c) waiting at a place of departure for a journey to re-commence either by the same or another mode of transport, except for any time the worker spends taking a rest break; or
- (d) waiting at the end of a journey for the purpose of carrying out duties, or to receive training, except for any time the worker spends taking a rest break.

## CHAPTER 2

### Salaried hours work

#### **The meaning of salaried hours work**

**21.**—(1) “Salaried hours work” is work which is done under a worker’s contract and which meets the conditions in paragraphs (2) to (5) of this regulation.

(2) The first condition is that the worker is entitled under their contract to be paid an annual salary or an annual salary and performance bonus.

(3) The second condition is that the worker is entitled under their contract to be paid that salary or salary and performance bonus in respect of a number of hours in a year, whether those hours are specified in or ascertained in accordance with their contract (“the basic hours”).

(4) The third condition is that the worker is not entitled under their contract to a payment in respect of the basic hours other than an annual salary or an annual salary and performance bonus.

(5) The fourth condition is that the worker is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week or month—

- (a) in equal weekly or monthly instalments, or
- (b) in monthly instalments that vary but have the result that the worker is entitled to be paid an equal amount in each quarter.

(6) Circumstances where it may not be practicable to pay a worker by equal instalments, or by an equal amount in each quarter, include where—

- (a) a performance bonus is awarded;
- (b) the annual salary is varied;
- (c) a payment is made in respect of hours in addition to basic hours; or
- (d) the employment starts or terminates during a week or month with the result that the worker is paid a proportionate amount of their annual salary for that week or month.

(7) Work may be salaried hours work whether or not—

- (a) all the basic hours are working hours;
- (b) the worker works hours in excess of the basic hours (whether the worker is entitled to be paid for those additional hours or not);
- (c) the annual salary may be reduced due to an absence from work.

(8) A “performance bonus” is a payment paid to a worker on merit attributable to the quality or amount of work done in the course of more than one pay reference period.

#### **Determining hours of salaried hours work in a pay reference period**

**22.**—(1) The hours of salaried hours work in a pay reference period are to be calculated in accordance with the following paragraphs.

(2) Where the pay reference period is a week, the hours of salaried hours work in that period are the basic hours divided by 52.

(3) Where the pay reference period is a month, the hours of salaried hours work in that period are the basic hours divided by 12.

(4) Where the pay reference period is any other period, the hours of salaried hours work in that period are the basic hours divided by the figure obtained by dividing 365 by the number of days in the pay reference period.

(5) The basic hours are to be ascertained in accordance with the worker's contract on the first day of the pay reference period in question unless paragraphs (6) or (7) apply.

(6) The hours of salaried hours work in a pay reference period are to be ascertained in accordance with regulations 24 to 28 if the worker—

- (a) during or before the payment reference period, works additional hours in excess of the basic hours in the calculation year, and
- (b) is not entitled to be paid more than annual salary and a performance bonus for those additional hours.

(7) The hours of salaried hours work in a pay reference period are to be determined in accordance with regulation 29 if the employment terminates before the end of the calculation year or the contract is varied before the end of the calculation year so that it is no longer a contract for salaried hours work.

#### **Absences from work to be reduced from the salaried hours work in a pay reference period**

**23.**—(1) The hours a worker is absent from work are to be subtracted from the hours of salaried hours work in a pay reference period if all of the following conditions are met—

- (a) the employer is entitled under the worker's contract to reduce the annual salary due to the absence;
- (b) the employer pays the worker less than the normal proportion of annual salary in the pay reference period as a result of the absence.

(2) The hours during which a worker takes industrial action are to be subtracted from the hours of salaried hours work in a pay reference period if an annual salary was payable for those hours, or would have been payable but for the industrial action.

#### **The meaning of the calculation year**

**24.**—(1) In this Chapter, "the calculation year" has the meaning given in the following paragraphs.

(2) For a worker who commenced the employment before 1st April 1999, then for so long as the worker continues in that employment the calculation year is a year beginning on an anniversary of the commencement of that employment.

(3) For a worker whose annual salary is payable monthly and who commenced the employment after 31st March 1999, then for so long as the worker continues in that employment—

- (a) if the worker commenced employment on the first day of a month, the calculation year is—
  - (i) the year beginning with that day;
  - (ii) in each subsequent year, a year beginning on an anniversary of that day;
- (b) if the worker commenced employment on any other day of a month, the calculation year is—

- (i) the period beginning with that day and ending with the day before the first anniversary of the first day of the next month;
- (ii) in each subsequent year, a year beginning on an anniversary of the first day of that month.

(4) For a worker whose annual salary is payable weekly and who commenced the employment after 31st March 1999, then for so long as the worker continues in that employment the calculation year is—

- (a) the year beginning with the first day of employment;
- (b) in each subsequent year, a year beginning on an anniversary of that day.

### **Determining the basic hours in the calculation year**

**25.**—(1) In this Chapter, the basic hours in a calculation year are determined in accordance with the following paragraphs.

(2) The basic hours in the calculation year are the basic hours ascertained in accordance with the contract at the start of the calculation year, unless there is a variation to the basic hours which takes effect in the calculation year.

(3) Where a variation to the basic hours takes effect in the calculation year, the basic hours in the calculation year are determined by adding together—

- (a) the proportion of basic hours in the calculation year in the period starting before the day during which the variation takes effect, and
- (b) the proportion of basic hours in the calculation year in the period after the day during which the variation takes effect until the end of the calculation year.

(4) If more than one contractual variation takes effect in the calculation year, the “basic hours in the calculation year” are determined by adding together—

- (a) the proportion of basic hours in the calculation year in the period starting before the day during which the first variation takes effect, and
- (b) for each variation, the proportion of basic hours in the calculation year in the period after the day during which the variation takes effect and before the day during which the next variation takes effect or, in the case of the final variation, the end of the calculation year.

(5) The proportion of basic hours in the calculation year for each of the periods in paragraphs (3) and (4) is calculated using the formula—

$$\left( \frac{D}{365} \right) \times H$$

where—

“D” means the number of days in the period;

“H” means the basic hours in the calculation year which have effect in that period.

### **Determining whether the worker works more than the basic hours in the calculation year**

**26.**—(1) For the purposes of this regulation and regulations 22(6) and 28, a worker works more than the basic hours in a calculation year if all of the following hours added together are more than the basic hours in a calculation year—

- (a) hours worked which form part of the basic hours in the calculation year;
- (b) hours when the worker was absent from work which form part of the basic hours in the calculation year;

- (c) hours worked in the calculation year which do not form part of the basic hours in the calculation year in respect of which the worker had no entitlement under their contract to a payment other than annual salary or annual salary and a performance bonus;
  - (d) hours treated as worked in accordance with regulation 27 to the extent that such hours consist of hours in respect of which the worker had no entitlement under their contract to a payment other than annual salary or annual salary and a performance bonus.
- (2) Hours during which the worker was taking part in industrial action are not to be included in sub-paragraphs (a) to (d).

**Hours treated as worked for the purpose of determining whether the worker works more than the basic hours in the calculation year and, where the worker does, the number of salaried hours work in that year**

27.—(1) The hours listed in sub-paragraphs (a) to (c) are treated as worked for the purposes of determining whether the worker works more than the basic hours in the calculation year (in accordance with regulation 26(1)(d)) and, where the worker does, the number of hours of salaried hours work in that year (in accordance with regulation 28)—

- (a) hours a worker spends training when the worker would otherwise be working;
- (b) hours a worker is available at or near a place of work for the purposes of working, unless the worker is at home;
- (c) hours a worker spends travelling for the purposes of working, when the worker would otherwise be working, unless the travelling is between—
  - (i) the worker’s home, or a place where the worker is temporarily residing other than for the purposes of working, and
  - (ii) a place of work or a place where an assignment is carried out.

(2) In paragraph (1)(b), hours when a worker is available only includes hours when the worker is awake for the purposes of working, even if a worker is required to sleep at or near a place of work and the employer provides suitable facilities for sleeping.

(3) In paragraph (1)(c), hours treated as hours when the worker would otherwise be working include—

- (a) hours when the worker is travelling for the purpose of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer;
- (b) hours when the worker is travelling where it is uncertain whether the worker would otherwise be working because the worker’s hours of work vary either as to their length or in respect of the time at which they are performed.

**Determining hours of salaried hours work if the worker works more than the basic hours in the calculation year**

28.—(1) If, in a pay reference period, a worker has worked more than the basic hours in the calculation year, the hours of salaried hours work in that pay reference period are calculated by adding together all of the following hours—

- (a) the proportion of basic hours attributable to the part of the pay reference period starting before the day during which the worker worked more than the basic hours in the calculation year;
- (b) the proportion of basic hours attributable to the part of the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year;

- (c) the number of hours actually worked in the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year;
- (d) the number of hours treated as worked, in accordance with regulation 27, in the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year.

(2) In paragraph (1)(a) and (b), each proportion of basic hours in the pay reference period is calculated using the formula—

$$\left(\frac{D}{365}\right) \times H$$

where—

“D” means the number of days in the part of the pay reference period referred to in paragraph (1)(a) or (b);

“H” means the basic hours in the calculation year.

(3) Reductions from the basic hours in the calculation year for absences, in accordance with regulation 23, must only be made from the proportion of basic hours determined under paragraph (1)(a).

(4) For each pay reference period in the calculation year after the pay reference period in which the worker worked more than the basic hours, the number of hours of salaried hours work are calculated by adding together all of the following hours—

- (a) the number of hours of salaried hours work in the pay reference period determined in accordance with regulation 22(2) to (4);
- (b) the number of hours actually worked in the pay reference period;
- (c) the number of hours treated as worked in the pay reference period in accordance with regulation 27.

(5) Regulation 23 (absences from work to be reduced from the hours of salaried hours work in a pay reference period) does not apply to the calculation in paragraph (4)(a).

**Hours of salaried hours work if the employment terminates before the end of the calculation year (or contract is varied so it is no longer a contract for salaried hours work)**

**29.**—(1) Where the employment terminates before the end of a calculation year the hours of salaried hours work in the final pay reference period are calculated in accordance with the following paragraphs.

(2) Where the worker does not work more than basic hours in the calculation year, the hours of salaried hours work in the final pay reference period are the sum of the following—

- (a) the number of hours of salaried hours work in the pay reference period calculated in accordance with regulation 22(2) to (4), and
- (b) the number of hours (if any) by which A exceeds B where—
  - “A” is the number of hours determined in accordance with regulation 26; and
  - “B” is the total of the number of hours of salaried hours work determined in accordance with regulation 22(2) to (4) in respect of all pay reference periods (including the final pay reference period) since the beginning of the calculation year.

(3) Where the worker works more than the basic hours in the calculation year, the hours of salaried hours work in the final pay reference period are the sum of the following—

- (a) the number of hours determined in accordance with regulation 28, and

- (b) the number of hours of salaried hours work calculated in accordance with regulation 22(2) to (4) for the period beginning on the day following the last day of the final pay reference period and ending at the end of the calculation year as if—
  - (i) it was a single pay reference period (containing that number of days), and
  - (ii) the worker had remained employed until the end of the calculation year without any absences.

(4) If a contract for salaried hours work is varied with the effect that it is no longer a contract for salaried hours work, this regulation is to apply as if the employment of the worker had been terminated and the last day of the worker’s final pay reference period had fallen on the day before the day on which the variation took effect.

## CHAPTER 3

### Time work

#### **The meaning of time work**

**30.** Time work is work, other than salaried hours work, in respect of which a worker is entitled under their contract to be paid—

- (a) by reference to the time worked by the worker;
- (b) by reference to a measure of output in a period of time where the worker is required to work for the whole of that period; or
- (c) for work that would fall within sub-paragraph (b) but for the worker having an entitlement to be paid by reference to the period of time alone when the output does not exceed a particular level.

#### **Determining hours of time work in a pay reference period**

**31.** The hours of time work in a pay reference period are the total number of hours of time work worked by the worker or treated under this Chapter as hours of time work in that period.

#### **Time work where worker is available at or near a place of work**

**32.—**(1) Time work includes hours when a worker is available, and required to be available, at or near a place of work for the purposes of working unless the worker is at home.

(2) In paragraph (1), hours when a worker is “available” only includes hours when the worker is awake for the purposes of working, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.

#### **Training treated as hours of time work**

**33.** The hours a worker spends training, when the worker would otherwise be doing time work, are treated as hours of time work.

#### **Travelling treated as hours of time work**

**34.—**(1) The hours when a worker is travelling for the purposes of time work, where the worker would otherwise be working, are treated as hours of time work unless the travelling is between—

- (a) the worker’s home, or a place where the worker is temporarily residing other than for the purposes of working, and
- (b) a place of work or a place where an assignment is carried out.

(2) In paragraph (1), hours treated as hours when the worker would “otherwise be working” include—

- (a) hours when the worker is travelling for the purpose of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer;
- (b) hours when the worker is travelling where it is uncertain whether the worker would otherwise be working because the worker’s hours of work vary either as to their length or in respect of the time at which they are performed.

#### **Hours not treated as time work**

**35.**—(1) The hours a worker is absent from work are not treated as hours of time work, except as specified in regulations 32 to 34.

- (2) The hours a worker spends taking part in industrial action are not hours of time work.
- (3) The hours a worker spends taking a rest break are not hours of time work.

(4) A worker is not to be treated as taking a rest break during hours which, in accordance with regulation 34, are treated as hours of time work.

### **CHAPTER 4**

#### **Output work**

#### **The meaning of output work**

**36.** Output work is work, other than time work, in respect of which a worker is entitled under their contract to be paid by reference to a measure of output by the worker, including a number of pieces made or processed, or a number of tasks performed.

#### **Determining hours of output work in a pay reference period**

- 37.** The hours of output work in a pay reference period are the total number of hours—
- (a) of rated output work which the worker is treated as working in that period as determined in accordance with regulation 43.
  - (b) of output work in that period which is not rated output work; and
  - (c) treated as hours of output work in that period as determined in accordance with regulations 38 and 39.

#### **Training treated as hours of output work**

**38.** The hours when a worker is training, if the worker would otherwise be doing output work, are treated as hours of output work.

#### **Travelling treated as hours of output work**

**39.**—(1) The hours when a worker is travelling for the purposes of output work are treated as hours of output work unless the travelling is between—

- (a) the worker’s home, or place where the worker is temporarily residing, and
- (b) the place of work or, except as mentioned in paragraph (2), premises at which the worker reports.

(2) If a worker does output work at home or a place where the worker is temporarily residing the hours when a worker is travelling between that place and premises at which the worker reports are to be treated as hours of output work.

### **Industrial action not treated as output work**

**40.** The hours when a worker is taking part in industrial action are not to be treated as hours of output work.

### **Requirements for rated output work**

**41.—**(1) In this Chapter, output work is “rated output work” if all of the following requirements are met—

- (a) there are no minimum or maximum working hours in the worker’s contract in relation to the output work;
- (b) the employer does not determine or control the hours actually worked in relation to the output work;
- (c) the employer has determined the average hourly output rate in accordance with regulation 42;
- (d) a notice which satisfies the requirements in paragraph (2) is given to the worker.

(2) The requirements are—

- (a) the notice was given to the worker before the beginning of the pay reference period (whether or not it was given before or had effect in relation to earlier pay reference periods), and
- (b) the notice conveys all of the following information in writing—
  - (i) that for the purposes of these Regulations the worker is to be treated as working for a certain period of time;
  - (ii) the employer has conducted a test or made an estimate of the average speed at which workers do the work to determine the period of time the worker is to be treated as working;
  - (iii) what the average hourly output rate is for the output;
  - (iv) the rate to be paid to the worker for a single measure of output;
  - (v) the telephone number for the Secretary of State’s helpline for workers and employers on workers’ pay and rights at work as published, from time to time, by the Secretary of State.

### **The meaning of average hourly output rate (rated output work)**

**42.—**(1) In this Chapter, the “average hourly output rate” is the mean number (including any fraction) of the measure of output per hour.

(2) To determine the average hourly output rate the employer must either—

- (a) conduct a test which satisfies the requirements in paragraph (3); or
- (b) make an estimate of the mean speed the output work is done which satisfies the requirements in paragraph (4).

(3) The requirements are—

- (a) the test is conducted on—
  - (i) all the employer’s workers who do the output work, or

- (ii) a sample of those workers which, as respects the speed, is representative of the worker's work as respects that measure of output;
  - (b) the test is conducted in similar physical conditions to those in which the worker will be doing the work; and
  - (c) the total output per hour during the test is divided by the number of workers tested.
- (4) The requirements are—
- (a) a test is conducted on a sample of the employer's workers which is, so far as reasonably practicable, representative as respects the speed at which they work, of the speed at which the workers who produce the measure of output work;
  - (b) that test is carried out in relation to work which—
    - (i) is reasonably similar to the output work and was done in similar physical conditions to those of the worker, or
    - (ii) is the same as the output work but was done in different physical conditions to those of the worker; and
  - (c) the average speed is reasonably adjusted to take into account the likely difference in time involved in the worker doing the output work in the worker's physical conditions in comparison to the test which was carried out.
- (5) If there are changes in the number or identity of workers who do the output work, the employer is not required to conduct a further test or make a further estimate unless the employer has reason to believe that the changes materially affect the average hourly output rate.

#### **Determining hours of rated output work in a pay reference period**

**43.** Where output work is rated output work, the time spent by the worker doing the output work during the pay reference period is 120 per cent of the number of hours that a worker, doing the work at the average hourly output rate, would have taken to produce the same measure of output in that period.

### CHAPTER 5

#### Unmeasured work

##### **The meaning of unmeasured work**

**44.** Unmeasured work is any other work that is not time work, salaried hours work or output work.

##### **Determining hours of unmeasured work in a pay reference period**

- 45.** The hours of unmeasured work in a pay reference period are the total number of hours—
- (a) which are worked (or treated as hours of unmeasured work in accordance with regulations 46 and 47) by the worker in that period; or
  - (b) which the worker is treated as working under a daily average agreement in that period, as determined in accordance with regulation 50.

##### **Training treated as hours of unmeasured work**

**46.** The hours when a worker is training, where the worker would otherwise be doing unmeasured work, are to be treated as hours of unmeasured work.

### **Travelling treated as hours of unmeasured work**

47. The hours when a worker is travelling for the purposes of unmeasured work are to be treated as hours of unmeasured work.

### **Industrial action not to be unmeasured work**

48. The hours when a worker takes part in industrial action are not to be treated as hours of unmeasured work.

### **The daily average agreement**

49.—(1) A “daily average agreement” is an agreement between a worker and employer—

- (a) which specifies the average daily number of hours the worker is likely to spend working where the worker is available to work for the full amount of time contemplated by the contract, and
- (b) is made in writing before the beginning of the pay reference period to which it relates.

(2) The requirement in paragraph (1)(a) is not satisfied unless the employer can show that the average daily number of hours specified is a reasonable estimate.

(3) Unless the worker and employer agree otherwise, the daily average agreement has effect solely for the purpose of determining the amount of unmeasured work the worker is to be treated as having worked for the purposes of these Regulations.

### **Determining the hours treated as worked under a daily average agreement**

50. The hours treated as worked under a daily average agreement for each day on which the worker worked in the pay reference period are—

- (a) where the worker was available to work for at least the full amount of time contemplated under the contract, the average daily number of hours specified in the daily average agreement;
- (b) where the worker was available to work for only part of the time contemplated by the contract, the proportion of the average daily number of hours specified in the daily average agreement which that part bears to the full amount of time contemplated under the contract.