
STATUTORY INSTRUMENTS

1999 No. 584

The National Minimum Wage Regulations 1999

Interpretation

General interpretative provisions

2.—(1) In these Regulations—

“the Act” means the National Minimum Wage Act 1998.

“allowance”, other than in regulation 8(b), means any payment paid by the employer to a worker attributable to a particular aspect of his working arrangements or to his working or personal circumstances that is not consolidated into his standard pay, but does not include an allowance designed to refund a worker in respect of expenses incurred by him in connection with his employment;

“arrangements made by the Government” means—

- (a) in England and Wales, arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973⁽¹⁾,
- (b) in Scotland, arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973 or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990⁽²⁾,
- (c) in Northern Ireland, arrangements made by the Department of Economic Development under section 1 of the Employment and Training Act (Northern Ireland) 1950⁽³⁾;

“employer” has the meaning given to it by section 54(4) of the Act but, in relation to a worker (as defined in section 54(3) of the Act), includes in addition, except in paragraph (6) of regulation 12—

- (a) an agent or principal in relation to whom, by virtue of section 34(2) of the Act, the provisions of the Act have effect as if there were a worker’s contract between him and an agency worker for the doing of work by the agency worker, and
- (b) an employer of a home worker who is a worker by virtue of section 35 of the Act;

“performance bonus” means a performance bonus or other merit payment attributable to the quality or amount of work done in the course of more than one pay reference period, and not therefore payable directly in respect of work done in specific hours;

“the total of reductions” means the total of reductions determined in accordance with regulations 31 to 37;

“the total of remuneration” means the total of money payments determined in accordance with regulation 30;

(1) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19); subsections (3A) and (3B) were inserted in respect of Scotland only by section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19); and subsections (4) and (6) were repealed by the Employment Act 1989 (c. 38), Schedule 7, Part I.

(2) 1990 c. 35; section 2 was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47(4) and Schedule 10.

(3) 1950 c. 59; as amended by S.I. 1988/1087 (N.I. 10) and S.I. 1990/1200 (N.I. 8).

“pay reference period” has the meaning assigned to it by regulation 10;

“worker” has the same meaning as in section 54(3) of the Act but, except in paragraph (6) of regulation 12, includes in addition—

- (a) an agency worker in relation to whom, by virtue of section 34(2) of the Act, the provisions of the Act have effect as if there were a worker’s contract for the doing of his work between him and an agent or principal; and
- (b) a home worker who is a worker by virtue of section 35 of the Act.

(2) In these Regulations “work” does not include work (of whatever description) relating to the employer’s family household done by a worker where the conditions in sub-paragraphs (a) or (b) are satisfied.

(a) The conditions to be satisfied under this sub-paragraph are—

- (i) that the worker resides in the family home of the employer for whom he works,
- (ii) that the worker is not a member of that family, but is treated as such, in particular as regards to the provision of accommodation and meals and the sharing of tasks and leisure activities;
- (iii) that the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, in respect of the provision of the living accommodation or meals; and
- (iv) that, had the work been done by a member of the employer’s family, it would not be treated as being performed under a worker’s contract or as being work because the conditions in sub-paragraph (b) would be satisfied.

(b) The conditions to be satisfied under this sub-paragraph are—

- (i) that the worker is a member of the employer’s family,
 - (ii) that the worker resides in the family home of the employer,
 - (iii) that the worker shares in the tasks and activities of the family,
- and that the work is done in that context.

(3) In these Regulations “work” does not include work (of whatever description) relating to an employer’s family business, done by a worker who satisfies the conditions in paragraph (4).

(4) The conditions to be satisfied under this paragraph are—

- (i) that the worker is a member of the employer’s family,
 - (ii) that the worker resides in the family home of the employer,
 - (iii) that the worker participates in the running of the family business,
- and that the work is done in that context.

The meaning of time work

3. In these Regulations “time work” means—

- (a) work that is paid for under a worker’s contract by reference to the time for which a worker works and is not salaried hours work;
- (b) work that is paid for under a worker’s contract by reference to a measure of the output of the worker per hour or other period of time during the whole of which the worker is required to work, and is not salaried hours work; and
- (c) work that would fall within paragraph (b) but for the fact that the worker is paid by reference to the length of the period of time alone when his output does not exceed a particular level.

The meaning of salaried hours work

- 4.—(1) In these Regulations “salaried hours work” means work—
- (a) that is done under a contract to do salaried hours work; and
 - (b) that falls within paragraph (6) below.
- (2) A contract to do salaried hours work is a contract under which a worker—
- (a) is entitled to be paid for an ascertainable basic number of hours in a year (referred to in this regulation as “the basic hours”); and
 - (b) is entitled, in respect of hours that consist of or include the basic hours, to be paid an annual salary—
 - (i) by equal weekly or monthly instalments of wages, or
 - (ii) by monthly instalments of wages that vary but have the result that the worker is entitled to be paid an equal amount in each quarter,regardless of the number of hours in respect of which the worker is entitled to the annual salary that are actually worked by him (if any) in any particular week or month; and
 - (c) has, in respect of those hours, no entitlement to any payment other than his annual salary or no such entitlement other than an entitlement to a performance bonus.
- (3) A contract that satisfies the conditions in paragraph (2) does so—
- (a) whether or not all the basic hours are working hours;
 - (b) whether or not the worker can be required under his contract to work, or does in fact work, any hours in addition to the total of hours in respect of which he is entitled to his annual salary, and regardless of any payments made in respect of those additional hours.
- (4) Circumstances having the result that in practice a worker may not be or is not paid by equal instalments of wages, or by an equal amount in each quarter, for hours in respect of which he is entitled under his contract only to his annual salary do not prevent the contract from being a contract for salaried hours work, for example—
- (a) that a worker may be awarded a performance bonus,
 - (b) that the amount of a worker’s annual salary may be varied,
 - (c) that by virtue of regulation 22 or 23 the worker is entitled to the national minimum wage in respect of hours in addition to his basic hours when, under his contract, there is no entitlement to any payment in addition to his annual salary for those additional hours (or to no payment in addition other than a performance bonus), and
 - (d) that the worker’s employment may start or terminate during a week or month with the result that the worker is paid a proportionate amount of his annual salary for the week or month in question.
- (5) The fact that, by reason of an absence from work for hours in respect of which his annual salary is normally payable, a worker is entitled under his contract, in respect of those hours, to be paid less than he would be but for the absence or to no payment does not prevent the worker’s contract from being a contract for salaried hours work.
- (6) The work done under a contract to do salaried hours work that falls within this paragraph, and is therefore salaried hours work, is work in respect of which the worker is entitled to no payment in addition to his annual salary, or to no payment in addition to his annual salary other than a performance bonus.
- (7) References in regulation 22 to work or hours of work in respect of which a worker is entitled to no payment other than his annual salary refer also to work or hours of work in respect of which the only payment to which the worker is entitled other than his annual salary is payment of a performance bonus.

The meaning of output work

5. In these Regulations “output work” means work that is paid for under a worker’s contract that is not time work and, but for the effect of the Act and these Regulations or anything done pursuant to these Regulations, would be paid for under that contract wholly by reference to the number of pieces made or processed by the worker, or wholly by reference to some other measure of output such as the number or value of sales made or transactions completed by the worker or as a result of his work.

The meaning of unmeasured work

6. In these Regulations “unmeasured work” means any other work that is not time work, salaried hours work or output work including, in particular, work in respect of which there are no specified hours and the worker is required to work when needed or when work is available.

Travelling

7. A worker is to be treated as travelling for the purposes of regulations 15(2), 16(2) and (5)(b), 17(1), 18(1) and 19(1)(b) if–

- (a) he is in the course of a journey by a mode of transport or is making a journey on foot;
- (b) he is waiting at a place of departure to begin his journey by a mode of transport;
- (c) where his journey is broken, he is waiting at a place of departure for his journey to re-commence either by the same or another mode of transport, except for any time during such a period he spends in taking a rest break; or
- (d) he is waiting at the end of a journey, in the case of regulations 15(2), 16(2), 17(1) and 18(1), for the purpose of carrying out his duties, or, in the case of regulations 16(5)(b) and 19(1)(b), to receive training, except for any time before he is due to carry out his duties or receive training which he spends in taking a rest break.

The meaning of payments

8. References in these Regulations to payments paid by the employer to the worker are references to payments paid by the employer to the worker in his capacity as a worker before any deductions are made, excluding–

- (a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages;
- (b) 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;
- (c) any payment of an award made by a court or tribunal or to settle proceedings which have been or might be brought before a court or tribunal, other than the payment of an amount due under the worker’s contract;
- (d) any payment referable to the worker’s redundancy;
- (e) any payment by way of an award under a suggestions scheme.

Benefits in kind not to count as payments

9. For the purposes of these Regulations the following shall not be treated as payments by the employer to the worker–

- (a) any benefit in kind provided to the worker, whether or not a monetary value is attached to the benefit, other than living accommodation;

- (b) any voucher, stamp or similar document capable of being exchanged for money, goods or services (or for any combination of those things) provided by the employer to the worker.

The pay reference period

10.—(1) The pay reference period is a month or, in the case of a worker who is paid wages by reference to a period shorter than a month, that period.

(2) When a worker's contract terminates regulations 14 and 30 to 37 shall be applied in relation to payments made in the period of a month beginning with the day immediately following the last day on which the worker worked under the contract as if such payments had been made in the worker's final pay reference period.