
DRAFT STATUTORY INSTRUMENTS

2020 No.

**The National Minimum Wage
(Amendment) (No. 2) Regulations 2020**

PART 2

AMENDMENTS TO THE NATIONAL MINIMUM WAGE REGULATIONS 2015

CHAPTER 1

SALARIED HOURS WORK

2. The National Minimum Wage Regulations 2015⁽¹⁾ are amended in accordance with this Part.
3. In regulation 3 (general interpretative provisions)—
 - (a) in the definition of “basic hours” for “21(5)” substitute “21(3)”;
 - (b) in the definition of “performance bonus” for “21(6)” substitute “21(8)”;
 - (c) at the appropriate place insert ““salary premium” has the meaning given in regulation 21(9);”.
4. In regulation 10 (payments and benefits in kind which do not form part of a worker’s remuneration) after sub-paragraph (n) insert “(o) payment of a salary premium.”.
5. In regulation 21 (the meaning of salaried hours work)—
 - (a) for paragraph (2) substitute—

“(2) The first condition is that the worker is entitled under their contract to be paid—

 - (a) an annual salary; or
 - (b) an annual salary and one or both of—
 - (i) a performance bonus; and
 - (ii) a salary premium.”;
 - (b) in paragraph (3) after “bonus” insert “or salary premium (or all three)”;
 - (c) for paragraph (4) substitute—

“(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—

 - (a) an annual salary; or
 - (b) an annual salary and one or both of—
 - (i) a performance bonus; and
 - (ii) a salary premium.”;
 - (d) for paragraph (5) substitute—

⁽¹⁾ S.I. 2015/621, to which there are amendments not relevant to these Regulations.

- “(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, month or other period, in instalments which—
- (a) are equal and occur not more often than weekly and not less often than monthly; or
 - (b) occur monthly and vary but have the result that the worker is entitled to be paid an equal amount in each quarter.”;
- (e) in paragraph (6)—
- (i) after sub-paragraph (a) insert “(aa) a salary premium is paid”; and
 - (ii) for sub-paragraph (d) substitute—
 - “(d) the employment starts or terminates during a week, month or other period provided for in paragraph (5)(a) with the result that the worker is paid a proportionate amount of their annual salary for that week, month or other period.”; and
- (f) after paragraph (8) insert—
- “(9) A “salary premium” is—
- (a) an amount of pay which is—
 - (i) in addition to the annual salary; or
 - (ii) an increase in the rate of pay for particular working hours;
 - (b) in respect of the basic hours; and
 - (c) attributable to working—
 - (i) at a particular time of the day;
 - (ii) on a particular day;
 - (iii) at a particular location;
 - (iv) in a particular working environment;
 - (v) within a particular geographical area;
 - (vi) on a particular task; or
 - (vii) subject to a particular responsibility.”.
6. In regulation 22 (determining hours of salaried hours work in a pay reference period)—
- (a) after paragraph (2) insert—
 - “(2A) Where the pay reference period is two weeks, the hours of salaried hours work in that period are the basic hours divided by 26.
 - (2B) Where the pay reference period is four weeks, the hours of salaried hours work in that period are the basic hours divided by 13.”;
 - (b) for paragraph (6)(b) substitute—
 - “(b) is not entitled to be paid more than annual salary, a performance bonus and a salary premium for those additional hours.”; and
 - (c) for paragraph (7) substitute—
 - “(7) The hours of salaried hours work in a pay reference period are to be determined in accordance with regulation 29 if—
 - (a) the employment terminates before the end of the calculation year;

- (b) the contract is varied before the end of the calculation year so that it is no longer a contract for salaried hours work; or
- (c) the calculation year is changed by the employer as provided for in regulation 24(5) to (8).”.

7. In regulation 24 (the meaning of the calculation year)—

- (a) after paragraph (1) insert—

“(1A) Paragraphs (2) to (4) apply unless an alternative calculation year takes effect in accordance with paragraphs (5) to (8).”;

- (b) in paragraph (4) for “weekly” substitute “other than monthly”; and

- (c) after paragraph (4) insert—

“(5) Where the requirements specified in paragraph (6) are met (subject to the exception in paragraph (7)), the employer may change a worker’s calculation year by specifying an alternative calculation year in a written notice given to the worker.

- (6) The requirements referred to in paragraph (5) are that—

- (a) the notice includes an explanation of the effect of the change of the calculation year;
- (b) the alternative calculation year does not begin within the period of three months beginning with the day on which the employer gave the notice;
- (c) the worker does not, before the day on which the notice specifies that the alternative calculation year begins, give the employer a written objection to the change;
- (d) a change to the worker’s calculation year has not already taken effect within the period of six years ending with the day on which the notice specifies that the alternative calculation year begins; and
- (e) the employer does not make any deduction or require the worker to make any payment or work any additional hours as a result of the change.

(7) The requirements set out in paragraph (6)(a) to (d) do not apply where on the day on which the notice specifies that the alternative calculation year begins the worker has been employed for less than the period of three months ending with that day.

(8) Where in accordance with paragraphs (5) to (7) the employer specifies an alternative calculation year—

- (a) the change takes effect on the day the alternative calculation year begins; and
- (b) in each subsequent year, the calculation year is a year beginning on an anniversary of that day.

(9) Where a worker’s calculation year is changed as provided for in paragraphs (5) to (8), regulation 29 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 new calculation year begins.”.

8. In regulation 26 (determining whether the worker works more than the basic hours in the calculation year) at the ends of each of paragraph (1)(c) and (d) insert “or salary premium (or all three)”.