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STATUTORY INSTRUMENTS

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**1999 No. 584**

**The National Minimum Wage Regulations 1999**

**PART III**

**WORKING TIME FOR THE PURPOSES  
OF THE NATIONAL MINIMUM WAGE**

*The hours worked in a pay reference period*

**Time work**

**20.** The time work worked by a worker in a pay reference period shall be the total number of hours of time work done by him in the pay reference period.

**Salaried hours work**

**21.**—(1) In this regulation, “the basic hours” means the basic number of hours in a year in respect of which a worker is entitled under his contract to his annual salary as ascertained in accordance with his contract on the first day of the pay reference period in question.

(2) Except as mentioned in paragraph (3) and regulations 22 and 23, the salaried hours work worked by a worker in a pay reference period shall be the basic hours divided by—

- (a) where the pay reference period is a week, 52;
- (b) where the pay reference period is a month, 12; and
- (c) where the pay reference period is any other period, by the figure obtained by dividing 365 by the number of days in the pay reference period (including non-working days).

(3) Where in a pay reference period—

- (a) a worker is absent from work for a number of hours in respect of which his annual salary is payable, and
- (b) is, for that reason, entitled to be paid less and is paid less than the normal proportion of his annual salary in respect of the pay reference period,

the salaried hours work worked by the worker in the pay reference period shall be the number of hours determined under paragraph (2) in relation to the pay reference period reduced by the number of hours referred to in sub-paragraph (a) of this paragraph.

(4) Hours in a pay reference period during which a worker is engaged in taking industrial action and in respect of which his annual salary is or, but for his engagement in the action, would be payable, shall be regarded as satisfying the requirements in sub-paragraphs (a) and (b) of paragraph (3) whether or not the worker’s entitlement to the normal proportion of his annual salary is affected by his engagement in the action and whether or not he is paid any amount in respect of those hours.

## **Determining the hours of salaried hours work where the basic hours have been exceeded**

**22.**—(1) Where in any calculation year the total of the hours referred to in paragraph (3) exceeds the basic hours, this regulation, and not regulation 21, applies for the purpose of determining the salaried hours work worked by a worker in the pay reference period during which the basic hours are exceeded and in the subsequent pay reference periods (if any) in the calculation year.

(2) In this regulation and regulation 23—

“the basic hours” means—

- (a) in a calculation year when the basic number of hours in respect of which the worker is entitled under his contract to his annual salary is not varied, that basic number;
- (b) in a calculation year when that basic number of hours is varied—
  - (i) where the basic hours are determined in respect of the calculation year before the only or first variation takes effect, the basic number of hours ignoring the effect of the variation,
  - (ii) where the basic hours are determined after a variation has taken effect, the sum of the following numbers of hours—
    - (aa) for the period beginning with the day on which the variation in question takes effect until the end of the year, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, in accordance with that variation, in a year of 365 days, which the number of days in the period bears to 365,
    - (bb) for the period starting with the beginning of the year and ending with the day before the day on which the only or first variation took effect, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, before the variation, in a year of 365 days, which the number of days in the period bears to 365, and
    - (cc) where there has been more than one variation, for each period beginning with the day on which a particular variation took effect and ending on the last day before the next variation took effect, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, in accordance with the earlier variation, in a year of 365 days, which the number of days in the period bears to 365,

but in applying regulation 22 for the purposes of paragraphs (5)(a) and (b)(i) and (6)(a) the definition of “the basic hours” in regulation 21(1) shall be used.

“calculation year” means—

- (a) in the case of a worker employed by an employer when these Regulations come into force, for so long as he continues in that employment, the year beginning on the day these Regulations come into force, and each subsequent year beginning on the anniversary of that day;
- (b) in the case of a worker whose annual salary is payable monthly and who becomes employed by an employer after these Regulations come into force, for so long as he continues in the same employment—
  - (i) where the worker becomes employed on the first day of a month, the year beginning with the first day of that month and each subsequent year beginning on the anniversary of that day,
  - (ii) where the worker becomes employed on any other day of a month, the period beginning with that day and ending with the day before the first anniversary of the

first day of the next month, and each year beginning on that anniversary or on a subsequent anniversary of the first day of that month;

- (c) in the case of a worker whose annual salary is payable weekly and who becomes employed by an employer after these Regulations come into force, for so long as he continues in the same employment, the year beginning with the first day of his employment and each subsequent year beginning on the anniversary of that day.

(3) In determining for the purposes of paragraph (1) whether the basic hours have been exceeded by a worker in any calculation year and, if so, when they were exceeded, the following hours in that year shall be taken into account—

- (a) the number of the worker's working hours that fell within the basic hours,
- (b) the number of hours for which the worker has been absent from work that fell within the basic hours,
- (c) any hours worked by the worker outside the basic hours in respect of which the worker had no entitlement under his contract to any payment other than his annual salary,
- (d) time required to be treated as working hours by regulation 16, to the extent that such time consisted of hours in respect of which the worker had no entitlement under his contract to his annual salary or to any other payment,

but excluding the number of hours, if any, during which the worker was engaged in taking industrial action.

(4) In that part of the pay reference period during which the basic hours are exceeded which is referred to in paragraph (5)(b) and in each subsequent pay reference period (if any) in the calculation year, a worker shall be treated as working for the sum of the following—

- (a) the number of hours in the pay reference period that would have fallen to be taken into account under paragraph (3)(a) if the basic hours had not been exceeded, but excluding any time during those hours in which the worker was engaged in taking industrial action, and
- (b) time required to be treated as working hours by regulation 16, to the extent that such time consists of hours in respect of which the worker is not entitled under his contract to his annual salary or to any other payment,

and the number of hours determined under this paragraph is referred to in paragraphs (5) and (6) and in regulation 23(3) as "the actual working hours".

(5) The salaried hours work worked by a worker in the pay reference period during which the basic hours are exceeded shall be the sum of the following—

- (a) in relation to the part of the pay reference period before the day on which the basic hours are exceeded, the number of hours that result from applying regulation 21 to the part as if it were a pay reference period containing the number of days in the part; and
- (b) in relation to the part of the pay reference period beginning with the day on which the basic hours are exceeded, the sum of—
  - (i) the number of hours that result from applying regulation 21(2) to the part as if it were a pay reference period containing the number of days in the part, but ignoring any reduction required by regulation 21(3), and
  - (ii) the actual working hours in that part.

(6) The salaried hours work worked by a worker in each subsequent pay reference period until the end of the calculation year shall be the sum of—

- (a) the number of hours that result from applying regulation 21(2) in relation to the pay reference period, but ignoring any reduction required by regulation 21(3); and
- (b) the actual working hours in the pay reference period.

### **Determining the hours of salaried hours work in certain cases where the employment terminates**

**23.**—(1) This regulation applies, in the circumstances specified in paragraphs (2) and (3), to the final pay reference period of a worker whose employment terminates in the course of a calculation year and in cases where the employment of a worker is treated as being terminated by virtue of paragraph (4).

(2) Where the basic hours have not been exceeded at the end of the final pay reference period but, at the end of that pay reference period, the total of the hours to be taken into account under regulation 22(3) since the beginning of the calculation year (the “A” hours) exceeds the total of the number of hours determined in accordance with regulation 21 in relation to all of the pay reference periods (including the final pay reference period) since the beginning of the calculation year (the “B” hours), the salaried hours work worked by the worker in that pay reference period shall be regarded as including (in addition to the number of hours determined in relation to the pay reference period in accordance with regulation 21) the number of hours by which the “A” hours exceed the “B” hours.

(3) Where the basic hours have been exceeded at any time during the calculation year before the end of the final pay reference period, the salaried hours work worked by the worker in that pay reference period shall be regarded as including (in addition to the number of hours determined in relation to the pay reference period in accordance with regulation 22(5) or, as the case may be, (6)) the number of hours that result from applying regulation 21(2) in relation to the period beginning with the day immediately following the last day of the worker’s final pay reference period and ending at the end of the calculation year (“the subsequent period”), as if—

- (a) the whole of the subsequent period was a single pay reference period (containing the number of days in it), and
- (b) the worker had continued to be employed under his contract to do salaried hours work for the whole of the subsequent period and had not been absent from work during it for any hours in respect of which regulation 21(3) requires a reduction.

(4) Where a worker’s contract is varied so that any salaried hours work required to be done under the contract becomes work that is not salaried hours work, this regulation shall apply as if—

- (a) the employment of the worker had been terminated; and
- (b) 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.

### **Output work**

**24.**—(1) The output work worked by a worker in a pay reference period shall be the total number of hours spent by the worker during the pay reference period in doing output work, except where the output work is output work of the kind specified in paragraph (2) in relation to which the conditions in regulation 25(1) are satisfied.

(2) The kind of output work mentioned in the exception to paragraph (1) is output work in respect of which (apart from the effect of regulation 25 and any agreement made pursuant to that regulation)—

- (a) the worker’s contract does not set any normal, minimum or maximum working hours; and
- (b) the employer does not in practice determine or control the hours worked by the worker.

### **“Fair estimate” agreements for output work**

**25.**—(1) The conditions referred to in regulation 24 are—

- (a) that there is an agreement in writing between the worker and his employer, made at any time before the beginning of the pay reference period, that—

- (i) contains a fair estimate of the number of hours of output work (including any time which is to be treated as output work) the worker is likely to spend in performing the work to be done in the pay reference period, and
  - (ii) requires the worker to keep a record of the hours of output work done by him in the pay reference period and to supply a copy of the record to the employer as soon as is reasonably practicable after the end of it; and
- (b) that the worker is contractually entitled to be paid the agreed rate for each piece produced or agreed rate of commission for each sale made or transaction completed by him in the pay reference period or, as the case may be, for each sale made or transaction completed as a result of output work done by him in the pay reference period.

(2) An estimate of the number of hours a worker is likely to work purporting to satisfy the condition in paragraph (1)(a)(i) is not a fair estimate if the employer cannot show that the number is at least four-fifths of the number of hours that an average worker doing the same work as the worker in the same working circumstances and producing, by reference to the same measure of output, the same output would on average spend working in a pay reference period.

(3) Unless otherwise agreed the agreement referred to in paragraph (1)(a) has effect solely for the purpose of determining the amount of output work the worker is to be treated as doing for the purpose of these Regulations and does not vary the worker's contract.

#### **Determining the hours of output work where there is a "fair estimate" agreement**

**26.**—(1) In paragraph (2) the term "ascertained hours" means the fair estimate of hours contained in an agreement referred to in paragraph (1)(a) of regulation 25.

(2) Where the conditions in regulation 25(1) are satisfied in relation to output work of the kind specified in regulation 24(2), the output work worked by a worker in the pay reference period in respect of the work covered by the agreement in question shall be treated as being—

- (a) where in the pay reference period the worker has worked for the ascertained hours or longer (including any time which is to be treated as output work), the ascertained hours; or
- (b) where in the pay reference period the worker has worked for less than the ascertained hours, the total of the number of hours he has worked (including such time).

#### **Unmeasured work**

**27.** Unless the condition in regulation 28(1) is satisfied, the unmeasured work worked by a worker in a pay reference period shall be the total of the number of hours spent by him during the pay reference period in carrying out the contractual duties required of him under his contract to do such work.

#### **"Daily average" agreements for unmeasured work**

**28.**—(1) The condition referred to in regulation 27 is that there is an agreement in writing between the worker and his employer, made at any time before the beginning of the pay reference period, determining the average daily number of hours the worker is likely to spend in carrying out the duties required of him under his contract to do unmeasured work on days when he is available to carry out those duties for the full amount of time contemplated by the contract.

(2) The condition in paragraph (1) is not satisfied if the employer cannot show that the average daily number of hours determined is a realistic average.

(3) Unless otherwise agreed the agreement referred to in paragraph (1) has effect solely for the purpose of determining the amount of unmeasured work the worker is to be treated as having worked for the purpose of these Regulations and does not vary the worker's contract.

**Determining the hours of unmeasured work where there is a “daily average” agreement**

**29.**—(1) In paragraph (2) the term “ascertained hours” means the number of hours of unmeasured work that would have been worked by the worker in a pay reference period if he had worked—

- (a) on each day worked by him in the pay reference period on which he was available to carry out his duties for at least the full amount of time contemplated by the contract, for the average daily number of hours specified in the agreement referred to in regulation 28(1); and
- (b) on each day worked by him in the pay reference period on which he was available to carry out his duties for only part of that amount of time, for the proportion of that average number of hours which the part bears to the full amount of time contemplated by the contract.

(2) Where the condition in regulation 28(1) is satisfied the hours of unmeasured work worked by a worker in the pay reference period shall be treated as being the ascertained hours.