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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The National Minimum Wage Regulations 2015**

**PART 5**

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

**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.