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DRAFT STATUTORY INSTRUMENTS

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**2017 No.**

**The Equality Act 2010 (Gender Pay  
Gap Information) Regulations 2017**

**Employee's working hours in a week**

7.—(1) The number of working hours in a week for a relevant employee, for the purposes of Step 6 in regulation 6, is to be determined as follows.

(2) Subject to paragraph (6), where an employee has normal working hours that do not differ from week to week or over a longer period, the number of working hours in a week for a relevant employee is the number of the normal working hours in a week for that employee under the employee's contract of employment, or terms of employment, in force on the snapshot date.

(3) Subject to paragraph (6), where the employee has no normal working hours, or the number of the normal working hours differs from week to week or over a longer period, the number of working hours in a week for the employee is—

- (a) the average number of working hours calculated by dividing by twelve the total number of the employee's working hours during the period of twelve weeks ending with the last complete week of the relevant pay period, or
- (b) where the employee has not been at work for a sufficient period, or for some other reason the employer is not reasonably able to make the calculation under paragraph (a), a number which fairly represents the number of working hours in a week having regard to such of the considerations specified in paragraph (5) as are appropriate in the circumstances.

(4) In calculating the average number of working hours for the purposes of paragraph (3)(a), no account is to be taken of a week in which no hours were worked by the employee, and hours worked in earlier weeks must be brought in so as to bring up to twelve the number of weeks of which account is taken.

(5) The considerations referred to in paragraph (3)(b) are—

- (a) the average number of working hours in a week which the employee could expect under the employee's contract of employment, or terms of employment; and
- (b) the average number of working hours of other employees engaged in comparable employment with the same employer.

(6) Where the employee is paid on the basis of piecework, the number of working hours in a week for the employee is the number of hours of output work for that employee in the week during the relevant pay period within which the snapshot date falls, determined in accordance with Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015(1).

(7) In its application by virtue of paragraph (6), Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015 has effect as if—

- (a) references to a worker were references to an employee, and
- (b) references to a pay reference period were references to a week.

(8) In this regulation, "working hours"—

- (a) includes hours when an employee is available, and required to be available, at or near a place of work for the purposes of working unless the employee is at home, and
  - (b) excludes any hours for which an employee is entitled to overtime pay.
- (9) In paragraph (8), 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.