

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Minimum Wage Regulations 2015 (“the 2015 Regulations”). These Regulations come into force on 6th April 2020.

Chapter 1 of Part 2 sets out the amendments to the 2015 Regulations which relate to salaried hours work. Regulation 3 adds a definition of “salary premium” to regulation 3 of the 2015 Regulations. A salary premium is an additional amount of pay attributable to working in defined circumstances, such as at a particular time of day (for example at night), or on a particular day (for example a bank holiday). The salary premium may be a separate amount that is in addition to the worker’s salary, or it may be an increase in the worker’s rate of pay for particular working hours.

Regulation 4 amends regulation 10 of the 2015 Regulations so that where a worker receives a salary premium, it is discounted from the worker’s remuneration for minimum wage purposes. Where the salary premium is in the form of an increase in the worker’s rate of pay, for example where a higher hourly rate is paid for working on a bank holiday, then only the amount of the increase is discounted.

Regulation 5 amends certain aspects of the conditions set out in regulation 21 of the 2015 Regulations which determine whether or not a worker is performing salaried hours work. The amendments provide that a salaried hours worker may:

- receive a salary premium in respect of the hours in the year for which the worker is paid an annual salary (the “basic hours”); and
- be paid in equal instalments which are not more often than weekly and not less often than monthly.

Regulation 7 amends regulation 24 of the 2015 Regulations, which determines a worker’s calculation year by reference to the day their employment began. The calculation year is used for calculating if and when a worker has worked all of their basic hours in a particular year. The amendments enable the employer to change the worker’s calculation year so that it begins with a day chosen by the employer. This may be done by giving the worker at least three months’ written notice, provided that certain requirements are met, such as that the employer provides a written explanation of the effect of the change. Where an employer changes a worker’s calculation year, regulation 29 of the 2015 Regulations applies, such that the employer may have to make an additional payment to the worker where the worker has worked in excess of the basic hours prorated for the proportion of the calculation year that has then elapsed.

Chapter 2 of Part 2 sets out the amendments to the 2015 Regulations which relate to reductions from a worker’s remuneration for the purpose of calculating the rate at which a worker has been paid. Regulation 9 amends regulation 12(2)(e) of the 2015 Regulations, which concerns reductions where a worker purchases goods or services from their employer. Where the purchase is made to comply with a requirement imposed by the employer, then this will not be a reduction if the employer reimburses the worker for the purchase (or intends to do so).

A similar effect is achieved by Regulation 10, which amends regulation 13 of the 2015 Regulations which concerns deductions and payments as respects a worker’s expenditure in connection with their employment. Payments paid by, or due from, the worker to the employer as respects such expenditure will not constitute a reduction if the employer reimburses the worker (or intends to do so). This makes this provision consistent with the position where the payment on account of such expenditure is to a third party.

Part 3 contains transitional provision which determines when and how the amendments made by Part 2 apply. Chapter 1 of Part 3 determines how the amendments made by Chapter 1 of Part 2 (relating to salaried hours work) apply in the case of a “re-categorised worker”. A “re-categorised worker” is a worker who on the day these Regulations come into force would meet the conditions for performing salaried hours work in regulation 21 of the 2015 Regulations as amended, but would do so only as a result of the amendments. For a re-categorised worker the amendments made by Chapter 1 of Part 2 only apply from the beginning of the worker’s first calculation year starting after 6th April 2022. The exception to this is where the employer has given the worker a written notice which nominates a day on which the amendments apply, in which case the amendments apply from that day. The nominated day must be on or before 6th April 2022.

Chapter 2 of Part 3 ensures that the amendments made by Chapter 2 of Part 2 (relating to reductions) do not take effect until the first pay reference period which begins on or after 6th April 2020.

A full impact assessment has not been prepared for this instrument as no significant impact on business activities is foreseen. Instead a de minimis assessment has been prepared as this instrument is likely to entail some costs for businesses, including transitional and recurring costs, but the net impact is estimated to be below £5million per year.