

# National Minimum Wage Naming Scheme

## Round 18, 9<sup>th</sup> December 2021: educational bulletin

### Introduction

The National Minimum Wage Naming Scheme exists to increase awareness of National Minimum Wage Legislation and to act as a deterrent to the minority of employers who may be tempted to underpay their workers.

In 2018 the Government undertook a review of the Naming Scheme in order to ascertain its effectiveness and ensure Naming was used in the most efficient way. The outcome of that review was published on 11th February 2020 and can be found here: [Naming employers who fail to pay minimum wage to be resumed under revamped rules](#). The first naming round under those new rules was published on 31 December 2020. As part of this review the Government has committed to be more transparent about the types of breaches we most commonly find.

This educational bulletin focuses on **salaried hours work**, highlighting in particular the legislative changes introduced in April 2020. You can find previous bulletins focused on **apprenticeship risks** [here](#) and on **deductions from pay** [here](#).

This bulletin also includes some more general statistics regarding breaches of National Minimum Wage legislation in this naming round.

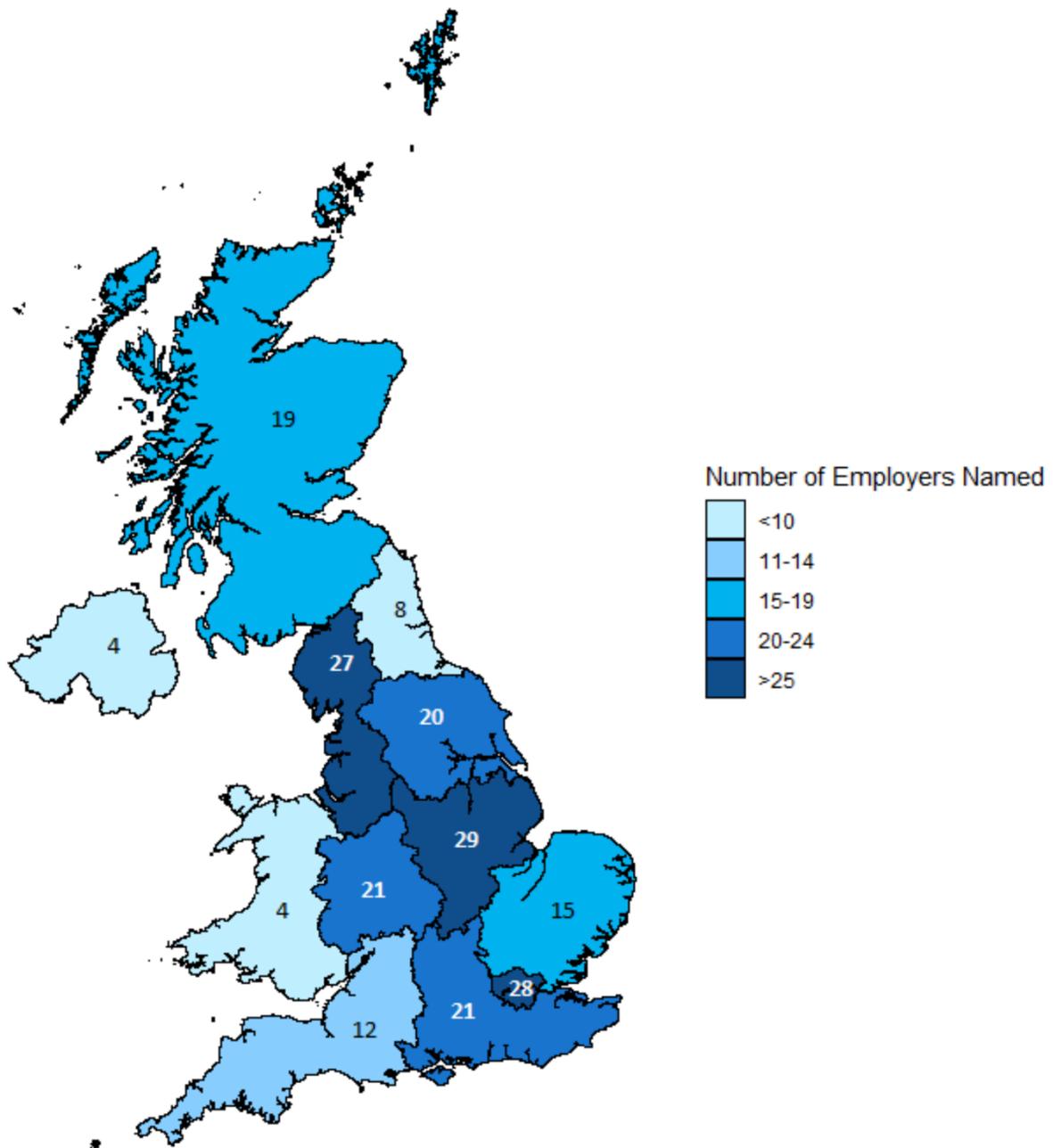
Full information on how to make sure you're paying your workers the minimum wage can be found at our recently updated guidance available [here](#).

## Employers named in Round 18



Department for  
Business, Energy  
& Industrial Strategy

**208 employers from across the UK were named as part of Round 18 of the minimum wage Naming Scheme**



Notes: Geography information is based on employer address postcodes (trading address). In some cases this may be where the minimum wage underpayment occurred.  
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## Reasons for minimum wage underpayment in Round 18

Table 1. Reasons for minimum wage underpayment in Round 18 below shows the number of minimum wage breaches identified for employers named for minimum wage underpayment in Round 18.

### Breaches were most commonly associated with employers:

- 37% deducted pay from workers' wages (76 =number of cases),
- 29 % failed to pay workers for working time (60), and
- 16% paid the incorrect apprenticeship rate (33).

Table 1. Reasons for minimum wage underpayment in Round 18

Type of underpayment	Further information	Number of employers named
Deductions or payments that take pay below the minimum wage	<p>Deductions may include:</p> <ul style="list-style-type: none"> <li>• Food / meals</li> <li>• Parking permits travel costs</li> <li>• Cost of, or lost, work equipment and / or Personal Protective Equipment</li> <li>• Stock or till shortage</li> <li>• Training costs</li> <li>• Christmas savings schemes</li> <li>• Uniform</li> <li>• Childcare costs</li> <li>• Salary sacrifice schemes e.g. cycle to work, pension and employer benefit schemes</li> <li>• Worker purchase of clothes to meet dress code</li> <li>• Attachment of earnings administration fees</li> </ul>	76
Unpaid working time takes pay below the minimum wage	<p>Unpaid working time include:</p> <ul style="list-style-type: none"> <li>• Additional work before and after a worker's shift</li> <li>• Rounding clock-in time to the nearest hour</li> <li>• Travel time</li> <li>• Issues with final pay where employment has come to an end</li> <li>• Pay is delayed / underpaid due to cashflow / cessation in trading / or ad hoc payments</li> </ul>	60

	<ul style="list-style-type: none"> <li>• Paid for 'regular' hours or day rate, but a worker has worked for more time than this</li> <li>• A salaried hours worker has worked in excess of basic hours</li> <li>• Time for undertaking mandatory training</li> <li>• Time worked during a sleep-in shift</li> <li>• Trial shifts</li> <li>• Overtime</li> </ul>	
Failure to pay the correct rate to apprentices	<p>This includes instances where a worker:</p> <ul style="list-style-type: none"> <li>• Is an apprentice aged over 19, has completed the first year of their apprenticeship and is still paid the apprentice rate</li> <li>• Is incorrectly classified as an apprentice and paid the apprentice rate</li> <li>• Has finished their apprenticeship but has not had their pay increased to reflect the higher minimum wage rate to which they are entitled</li> </ul>	33
Failure to pay the uprated minimum wage	<p>This includes:</p> <ul style="list-style-type: none"> <li>• Failure to increase a worker's pay when they become eligible for a new minimum wage rate following a birthday</li> <li>• Failure to uplift after the increase to the minimum wage rates on the 1<sup>st</sup> April</li> </ul>	22
Failure to correctly apply the accommodation offset	<p>This includes:</p> <ul style="list-style-type: none"> <li>• Accommodation rate above offset therefore reducing pay</li> <li>• Living accommodation not provided</li> </ul>	8
Incorrect work type	<p>Incorrect work type has impacted on treatment of elements of pay. For example, incorrectly treating a worker as a:</p> <ul style="list-style-type: none"> <li>• Salaried hours worker (broadly speaking, paid an annual salary, under a contract for a basic number of hours each year)</li> <li>• Time hours worker (broadly, paid by the hour)</li> <li>• Output worker (broadly, paid by the piece - the number of things they make or the tasks they complete)</li> <li>• Unmeasured worker (paid in any other way)</li> </ul>	19

Worker status error	This includes instances where the worker is incorrectly treated as self-employed, or an unpaid intern that should be classified as worker	4
Other	Any other reason for arrears which does not fit another category such as an hourly rate paid below NMW	54

*Notes: Some employers had underpayments for more than one reason. This table therefore totals to more than the 208 employers named in Round 18.*

The table shows that deductions or payments that take pay below the minimum wage is the most common reason for underpayment in this round. This issue was covered in the Educational Bulletin accompanying Round 16 published on 31 December 2020, available [here](#). Failure to pay the correct rate to apprentices was covered in the Educational Bulletin accompanying Round 17; it was published on 5 August 2021, available [here](#).

### **Types of work and salaried hours work**

The minimum wage is worked out as an hourly rate, but it applies to all eligible workers, even if they are not paid by the hour. How you calculate the minimum wage depends on how the worker is paid. Broadly, there are four types of work:

- Time work, for workers who are paid by the hour
- Output work, for workers who are paid by the number of things they make or tasks they complete
- Salaried hours work, for workers who are paid an annual salary under a contract for basic hours each year
- Unmeasured work, for workers who are paid in any other ways.

In this round, 19 employers underpaid their workers at least in part due to using the incorrect work type. You can find out more about types of work [here](#).

Workers who are paid an annual salary through regular instalments throughout the year are salaried hours workers. Their contracts should set out the basic number of hours for which they are to be paid and their entitlement to an annual salary.

In practice, this means workers can receive a fixed salary throughout the year, even if their hours fluctuate from month to month.

Salaried hours workers must be paid not more often than weekly and not less often than monthly in equal instalments – for example, monthly, 4-weekly, fortnightly or weekly payments. Alternatively, they can be paid in monthly instalments that vary but add up to the same amount in each quarter.

More information on salaried hours work is available [here](#).

## Recent legislative changes

Amendments to the National Minimum Wage Regulations came into force on 6 April 2020. The amendments provide more flexibility in how salaried workers are paid and reduce the risk of employers being caught out by the differences in hours worked from one month to the next. The changes include:

- permitting additional payment cycles for salaried workers, including fortnightly and 4-weekly cycles, providing choice and flexibility to employers and workers
- allowing employers to choose the 'calculation year' fit for their workers, helping them to better monitor the hours worked by salaried workers and identify potential underpayment of wages
- ensuring salaried workers can receive salary premiums, for example for working on Bank Holidays, without this excluding them from the definition of salaried hours work.

In effect, this broadens the definition of salaried workers, and means more workers and employers can take advantage of the flexibility afforded by salaried hours status.

## Calculation year

Salaried hours workers' pay is calculated over a calendar year; hence it's important employers know the calculation years for their salaried hours workers and ensure they pay at least the minimum wage accordingly.

By default, a salaried hours worker's calculation year generally begins on the anniversary of their start date, with an exception for workers paid monthly:

- In the case of monthly-paid workers who start on the first day of a month, say 1<sup>st</sup> May, their calculation year will be 1<sup>st</sup> May to 30<sup>th</sup> April in the following year.
- In the case of monthly-paid workers who start part way through a month, say 15<sup>th</sup> May, their calculation year will be 15<sup>th</sup> May to 31<sup>st</sup> May of the following year and then starting on 1<sup>st</sup> June and ending on 31<sup>st</sup> May each subsequent year.
- In the case of workers paid other than monthly, if they start on 22<sup>nd</sup> May their calculation year will be 22<sup>nd</sup> May to 21<sup>st</sup> May in the following year. It will then start on 22<sup>nd</sup> May in each subsequent year.

## Changing the calculation year

Under the legislative changes, employers may now change the calculation year for each of their salaried hours workers provided that certain requirements are met, for example giving the worker at least 3 months' written notice and a change not having already been made in the previous 6 years. This means employers can arrange for all their workers to have the same calculation year.

See [here](#) for more detail.

## **Re-categorised workers and the transitional provision**

By broadening the definition of salaried hours work, some workers who were previously performing unmeasured or time work are re-categorised as salaried hours workers. For these workers, transitional rules apply.

By default, the new rules will apply to such workers from the start of their first calculation year after 6 April 2022.

Employers can bring this date forward by nominating a date when the new rules will apply to the re-categorised worker. The worker's calculation year will also begin on the nominated date and on the anniversary of that date thereafter. The employer must confirm this to the worker in writing, but there is no need to give 3 months' notice. The nominated date cannot be later than 6 April 2022.

Even if the employer does not make use of this transitional provision, they can still change the worker's calculation year at a later date, in line with the requirements outlined above.

## **Other minimum wage enforcement issues**

### **What counts as pay for minimum wage purposes?**

Minimum wage is calculated by determining the worker's total remuneration in a pay reference period and checking that the average hourly rate of pay for that period is at least the relevant minimum wage rate.

For further information on what counts as pay for minimum wage purposes and on the steps to ensure compliance, please consult [Calculating the Minimum Wage](#)

### **Record-keeping**

Employers' records must be sufficient to show that they are paying each worker at least the minimum wage for every pay reference period worked. Employers must be clear on what elements count as pay for Minimum Wage purposes and they must ensure that any deductions made do not take the worker's pay below the minimum wage rate. Please consult [Calculating the Minimum Wage: record-keeping](#)

If employers have any concerns about whether they are paying the minimum wage, they can contact the Acas Helpline on 0300 123 1100 or visit [their website](#) for free, confidential and impartial advice.

## **What to do if you have been underpaid the minimum wage**

If anyone thinks they have been underpaid, they should complain to HMRC using the online form on gov.uk, or call the Acas helpline. Complaints can be made anonymously and HMRC won't reveal a worker's identity to the employer. HMRC consider every worker complaint they receive. This usually involves contacting the complaint worker to get further details. HMRC won't share your details with your employer if you don't want them to.

Throughout the year, workers can access the [Check Your Pay website](#) for clear advice about what their pay should be and how to report breaches. Workers can call the Acas helpline (0300 123 1100) for free, impartial and confidential advice about their rights and entitlements. Acas also offers a translation service. Acas officers will pass on cases to HMRC for further consideration where appropriate.

### **Further sources of information**

For more information on National Minimum Enforcement see [National minimum wage law: enforcement](#), and for enforcement statistics from the 2019/20 financial year see the [Enforcement and Compliance report](#).