

National Minimum Wage Naming Scheme

Round 20, February 2024: Educational Bulletin – Salary Sacrifice

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.

This educational bulletin focuses on reductions in salary i.e., salary sacrifice.

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

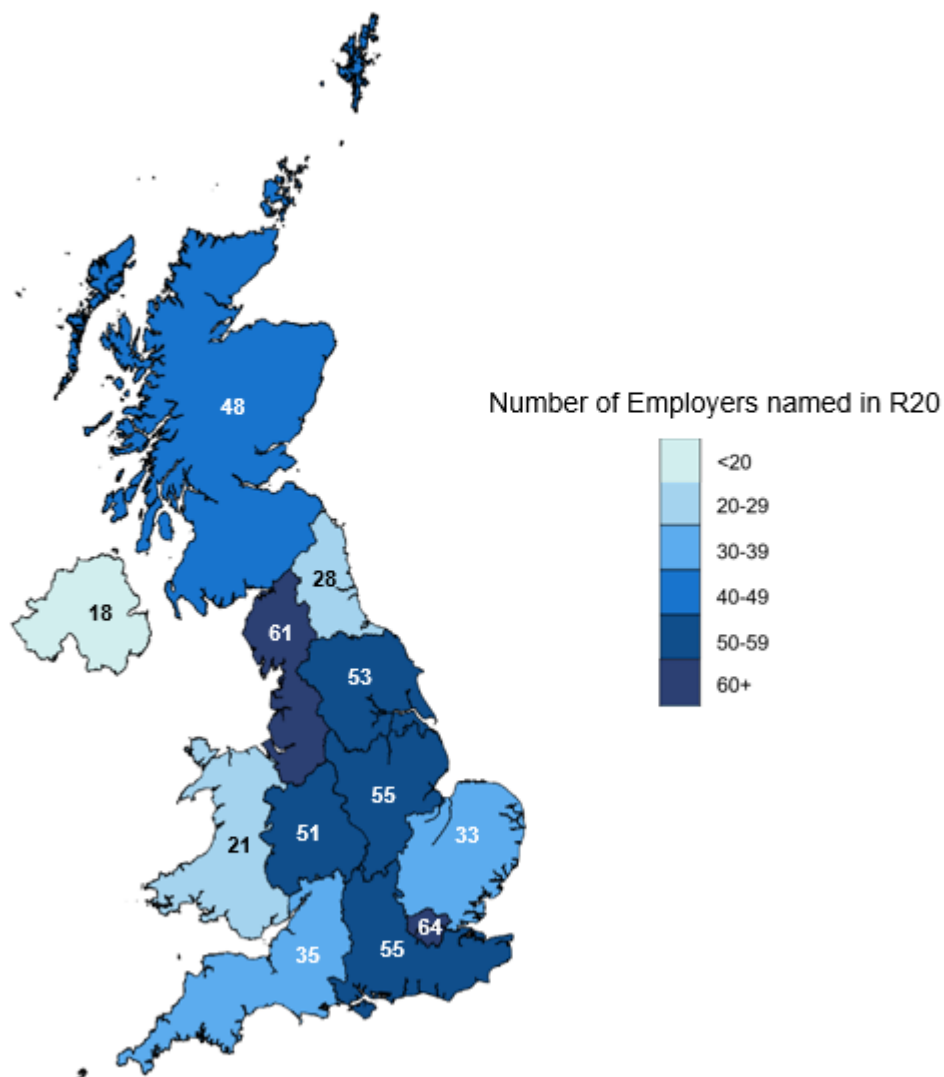
Full information on how to make sure you're paying your workers the minimum wage can be found in the [Calculating the Minimum Wage guidance](#).

Employers named in Round 20 by region

524 employers from across the UK were named as part of Round 20 of the Government's Naming Scheme



Department for
Business & Trade



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Notes: The map shows 522 employers, as 2 employers in this naming round did not have full UK trading addresses. Geographical information is based on employer address postcodes (trading address). In some cases, this may not be where the minimum wage underpayment occurred.

Reasons for minimum wage underpayment in Round 20

Table 1 shows the number of minimum wage breaches identified for employers named for minimum wage underpayment in Round 20. Some employers had underpayments for more than one reason.

- 35% employers deducted pay from workers' wages (183 [=number of employers]),
- 31% of employers failed to pay workers for working time (160) and
- 16% of employers paid the incorrect apprenticeship rate (82).

Table 1. Reasons for minimum wage underpayment in Round 20

Type of underpayment	Further information	Number of employers named
Reductions/ deductions or payments that take pay below the minimum wage	Deductions, including reductions in salary, may include: <ul style="list-style-type: none"> • Food / meals • Parking permits and/or travel costs • Cost of, or lost, work equipment and / or Personal Protective Equipment • Stock or till shortage • Training costs • Christmas savings schemes (when administered incorrectly) • Uniform • Childcare costs • Salary sacrifice schemes e.g. cycle to work, pension and employer benefit schemes • Worker purchase of clothes to meet dress code 	183
Unpaid working time takes pay below the minimum wage	Unpaid working time includes: <ul style="list-style-type: none"> • Additional work before and after a worker's shift • Rounding clock-in time to the nearest hour, half hour or 5 minutes. • Unpaid travel time • Issues with final pay where employment has come to an end • Pay is delayed / underpaid due to cashflow / cessation in trading / or ad hoc payments • Paid for 'regular' hours or day rate, but a worker has worked for more time than this • A salaried hours worker has worked in excess of basic hours 	160

	<ul style="list-style-type: none"> • Time for undertaking mandatory training • Time worked during a sleep-in shift • Trial shifts • Overtime 	
Failure to pay the correct rate to apprentices	<p>This includes instances where a worker:</p> <ul style="list-style-type: none"> • Is an apprentice aged over 19, has completed the first year of their apprenticeship and is still paid the apprentice rate • Is incorrectly classified as an apprentice and paid the apprentice rate • Has finished their apprenticeship but has not had their pay increased to reflect the higher minimum wage rate to which they are entitled 	82
Failure to pay the uprated minimum wage	<p>This includes:</p> <ul style="list-style-type: none"> • Failure to increase a worker's pay when they become eligible for a new minimum wage rate following a birthday • Failure to uplift after the increase to the minimum wage rates on 1 April 	55
Failure to correctly apply the accommodation offset	<p>This includes:</p> <ul style="list-style-type: none"> • Accommodation charge above the accommodation offset rate therefore reducing pay • Living accommodation not provided 	34
Incorrect work type	<p>Incorrect work type has impacted on treatment of elements of pay.</p> <p>The hours for which National Minimum Wage must be paid depends on the type of work the worker is doing. If an employer uses the incorrect type of work, the worker may not be paid National Minimum Wage for all the hours worked.</p> <p>For example, incorrectly treating a worker as performing:</p> <ul style="list-style-type: none"> • Salaried hours work (broadly speaking, paid an annual salary, 	29

	<p>under a contract for a basic number of hours each year)</p> <ul style="list-style-type: none"> • Timed hours work (broadly, paid according to the number of hours they are at work) • Output work (broadly, paid by the piece - the number of things they make or the tasks they complete) • Unmeasured work (paid in any other way) 	
Worker status error	This includes instances where the worker is incorrectly treated as self-employed, or an unpaid intern that should be classified as a worker	12
Other	Any other reason for arrears which does not fit another category such as an hourly rate paid below NMW	149

Notes: Some employers had underpayments for more than one reason. This table therefore totals to more than the 524 employers named in Round 20.

The table shows that reductions/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 was covered in the Educational Bulletin covering Round 18, it was published on 8 December 2021, available [here](#).

Unpaid working time was covered in the Educational Bulletin covering Round 19, it was published on 21 June 2023, available [here](#).

The second most common reason for underpayment in this round was unpaid working time.

Salary sacrifice - Reductions in pay

Employers and workers often enter into arrangements whereby the worker agrees to a contractual reduction in their pay in exchange for some form of benefit. This is often referred to as a 'Salary sacrifice', but this is not a term that is recognised in National Minimum Wage (NMW) legislation. The reduction in pay is a contractual agreement which means that the new, lower amount of pay is what is considered for NMW purposes. Employers and workers cannot enter into an agreement that results in their pay being reduced below the NMW. It is the responsibility of all employers to understand these rules.

Examples of where these arrangements are used can include:

- company cars
- childcare vouchers
- work-related training
- cycle to work schemes
- car parking near the workplace
- additional pension contributions
- selling additional annual leave

Where there is more than one arrangement, each additional arrangement will further reduce a worker's pay for minimum wage purposes.

In practice employers describe and label a variety of differing arrangements as 'salary sacrifice' including those where deductions are being taken from pay. The position for minimum wage purposes will be based on the actual arrangements themselves and not on the description or labels used.

For more information on NMW deductions, please refer to HMRC "[deductions from pay and payments by workers](#)" guidance.

Example scenarios

Scenario 1

James is 25 years old and earns £25,000 per year. James enters into a salary sacrifice agreement where he agrees to sacrifice £3,600 each year in return for Child Care vouchers. This means that James has agreed to a change in his contract whereby his salary is reduced, and he is now entitled to be paid £21,400 per year.

James is performing salaried hours work for NMW purposes and is paid his salary for working 2,080 basic hours. James is paid monthly in equal instalments of £1,783.33 for 173.33 (notional) hours.

The applicable NLW rate for the worker is £10.42 per hour.

The salary sacrifice arrangement means that James is now paid at a rate of £10.29 per hour ($\frac{£21,400}{2080}$ hours annually or $\frac{£1,783.33}{173.33}$ hours monthly = £10.29 per hour) this is below the NLW, so James would now be underpaid.

Scenario 2

Asma is 30 years old and earns £25,000 per year. Asma enters into a salary sacrifice agreement where she agrees to sacrifice £2,400 each year to a workplace pension. This means that Asma has agreed to a change in her contract whereby her salary is reduced, and she is now entitled to be paid £22,600 per year.

Asma is performing salaried hours work for NMW purposes and is paid her salary for working 2,080 basic hours. Asma is paid monthly in equal instalments of £1,883.33 for 173.33 (notional) hours.

The applicable NLW rate for the worker is £10.42 per hour.

The salary sacrifice arrangement reduces pay for NMW purposes but in this scenario Asma's new contractual entitlement is still more than the NLW at an hourly rate of £10.86 per hour (£22,600/2080 hours annually or £1,883.33/173.33 hours monthly = £10.86 per hour).

Scenario 3

Margaret is 32 years old and earns £25,000 per year. Margaret enters into a salary sacrifice agreement where she agrees to sacrifice £1,800 each year to pay for a workplace nursery for her child. This means that Margaret has agreed to a change in her contract whereby her salary is reduced, and she is now entitled to be paid £23,200 per year.

Margaret is performing salaried hours work for NMW purposes and is paid her salary for working 2,080 basic hours. Margaret is paid monthly in equal instalments of £1,933.33 for 173.33 (notional) hours.

The applicable NLW rate for the worker is £10.42 per hour.

The salary sacrifice arrangement reduces pay for NMW purposes but in this scenario Margaret's new contractual entitlement is still more than the NLW at an hourly rate of £10.86 per hour (£23,200/2080 hours annually or 1,933.33/173.33 hours monthly = £11.15 per hour).

Later in her employment Margaret wants to make additional contributions to her workplace pension. She would like to contribute £250 per month.

Margaret's employer advises her that this can be done in one of two ways, either through a salary sacrifice arrangement or via deductions from her pay. Margaret's preference is for the additional pension contribution to be taken via salary sacrifice because she knows that this will have the added benefit of reducing her taxable income.

However, when Margaret's employer conducts an NMW check they identify that allowing another salary sacrifice arrangement will result in Margaret's pay falling below the NMW. This is because Margaret's salary is currently £23,200 per year, the proposed salary sacrifice for pension will reduce her salary further to £20,200 per year.

The salary sacrifice arrangement would mean that Margaret is now paid at a rate of £9.71 per hour (£20,200/2080 hours annually or £1,683.33/173.33 hours monthly = £9.71 per hour). This is below the NLW meaning that Margaret would be underpaid.

Margaret's employer explains the situation to her, and she elects to make the additional pension contributions via a deduction from her pay. This means that Margaret's pay for NMW purposes remains at £23,200 per year.

Margaret's employer knows that when they make a deduction from pay at her request, and then pays that money to a third party, in this case the pension provider on Margaret's behalf, the deduction will not reduce pay for NMW purposes.

NB: This example is specific to the individual facts and circumstances described. Employers should always take care to ensure that deductions from pay are treated correctly in accordance with NMW Regulations.

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 guidance](#).

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 in case of underpayment

If anyone thinks they have been underpaid, they should complain to HMRC using the online form on gov.uk (www.gov.uk/government/publications/pay-and-work-rights-complaints) or call the Acas helpline. Complaints can be made anonymously and HMRC won't reveal a worker's identity to the employer. HMRC considers every worker complaint it receives. This usually involves contacting the complainant 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 2021/22 financial year see the [Enforcement and Compliance report](#) For more information on National

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