# GUIDANCE ON THE SEAFARERS' WAGES REGULATIONS 

Part 2 - Consultation Draft

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## 1. Introduction

## Whom is this guidance for?

1.1 The purpose of this guidance is to assist harbour authorities and operators of services in scope of the Seafarers' Wages Act 2023 ("the Act") to comply with their duties under that Act and the Seafarers' Wages Regulations 2024 ("the Regulations"). It also sets out the enforcement powers to be used by the Maritime and Coastguard Agency (MCA) and may assist unions and seafarers to understand how the Act and Regulations will apply to the payment of wages.
1.2 [Note: This draft guidance document currently only covers the surcharge tariff and equivalent to National Minimum Wage as we have consulted on the draft Regulations in two phases, but it is intended a single guidance document will cover all aspects of the Act and implementing Regulations]

## Overview of the Seafarers' Wages Act 2023

1.3 The objective of the Act is to protect and improve remuneration for seafarers with close ties to the UK. It makes access to UK harbours for international services calling regularly at the UK conditional on payment of the National Minimum Wage ("NMW") equivalent or a surcharge.

## 2. Rate of surcharge

## What is the tariff?

2.1 Where a surcharge is imposed on an operator, the amount will be determined by the tariff of surcharges specified in [Schedule 2] to the Regulations.
2.2 The intention is that the surcharge is at a level such that it incentivises the payment of NMW equivalent.
2.3 The tariff is based on the gross tonnage (GT) of the ships providing the service. There are separate rates for ships with a passenger carrying capacity of 12 or fewer, and those with a passenger carrying capacity of more than 12 . These factors act as a proxy for the approximate number of seafarers on board.
2.4 For ships which are certified to carry 12 or fewer passengers the tariff is:
2.5 10p per GT up to a maximum of $50,000 \mathrm{GT}$.
2.6 1p per GT in excess of $50,000 \mathrm{GT}$.
2.7 For ships which are certified to carry more than 12 passengers the tariff is:
2.820 p per GT up to a maximum of $50,000 \mathrm{GT}$.
$2.92 p$ per GT in excess of $50,000 \mathrm{GT}$.
2.10 This tariff is to be applied every time a ship providing a service on which a surcharge has been imposed enters the harbour.

### 2.11 Example 1:

2.12 The surcharge is imposed on the operator of service A as they failed to provide a declaration within the period prescribed in the Regulations. Service A is provided by Ship X and Ship Y. These are both passenger ferries certified to carry more than 12 passengers.
2.13 Ship $X$ has a gross tonnage of 47,500 . Every time this ship enters the harbour, a surcharge of $£ 9,500$ would apply ( $47,500 \times 20$ p)
2.14 Ship $Y$ has a gross tonnage of 50,100 . Every time this ship enters the harbour, a surcharge of $£ 10,002$ would apply. ( $50,000 \times 20 p+100 \times 2 p$ ).

### 2.15 Example 2:

2.16 The surcharge is imposed on the operator of service $B$ as they failed to provide a declaration within the period prescribed in the Regulations. Service B is provided by Ship Z, a Ro-Ro cargo ship certified to carry 12 or fewer passengers.
2.17 Ship $Z$ has a gross tonnage of 15,000 . Every time this ship enters the harbour, a surcharge of $£ 1,500$ would apply ( $15000 \times 10$ p).

## Who applies the tariff?

2.18 It is for harbour authorities to apply the tariff to ships calling at their harbour when a surcharge is imposed on the operator of that service.

## 3. National Minimum Wage Equivalent

## Overview

3.1 The Act makes access to UK harbours for international services calling regularly at the UK conditional on paying seafarers a rate at least equivalent to the NMW for their UK work or a surcharge. The Regulations specify what constitutes the NMW equivalent rate ("NMW equivalent"), as well as setting out the method of calculating the hours that a seafarer is deemed to be working and the hourly rate that they are being paid.

## Relationship with the NMW legislation

3.2 The Regulations use some of the same concepts as the National Minimum Wage Act 1998 and the National Minimum Wages Regulations 2015 ("the NMW legislation"). However, there are important differences between the system established by the Regulations and the NMW legislation. In particular, users of the Regulations should be aware that some concepts from the NMW legislation are applied in a different way by the Regulations.

## Calculation of the hourly rate of pay

3.3 The primary distinction between the NMW legislation and the Regulations concerns the calculation of the hourly rate that seafarers are being paid.
3.4 Under the NMW legislation there is a single calculation to determine whether the NMW has been paid: remuneration divided by hours of work. That results in a single hourly rate at which a worker is treated as remunerated.
3.5 Under the Regulations there are three hourly rates:
3.6 The basic rate: this is essentially the hourly rate received by a seafarer for all of their work before there has been any uplift in pay to meet the NMW equivalent. It is calculated by dividing a seafarer's basic remuneration by their total hours of work.
3.7 The UK additional rate: this is the hourly rate received by a seafarer which is specific to their hours of work carried out in the UK or its territorial waters ("UK work"). It is calculated by dividing UK additional remuneration (if any) by hours of UK work. UK additional remuneration is any remuneration paid to the seafarer in addition to their basic remuneration in order to meet the requirements of the Regulations; i.e. it only includes remuneration which is attributable to hours of UK work and which would not be paid to the seafarer if the hours of work were not hours of UK work.
3.8 The overall UK hourly rate: this is the overall hourly rate received by the seafarer for their hours of UK work. It is calculated by adding together their basic rate and their UK additional rate.
3.9 The Regulations and this Guidance give much more detail on these concepts. But the following provides a straightforward example of these concepts in practice.
3.10 Example: Seafarer A (aged 25) works 150 hours a month and their basic remuneration is $£ 1,200$. Of the 150 hours, 20 hours a month are hours of UK work.
3.11 Seafarer A's basic rate is $£ 8$ an hour (calculated by the sum $£ 1,200 / 150$ hours).
3.12 If the operator of Seafarer A's service wants to provide a declaration under the Act, the Regulations require that Seafarer A be paid the NMW equivalent for their hours of UK work. That is $£ 11.44$ an hour for a seafarer aged over 21.
3.13 To meet this requirement an employer could:
i. increase Seafarer A's basic rate to $£ 11.44$ an hour;
ii. pay Seafarer A a UK additional rate for their hours of UK work.
3.14 If the employer decided on option (ii), in this example the UK additional rate would need to be $£ 3.44$. That would result in an overall UK rate of $£ 11.44$ (being $£ 8+$ £3.44).

## Types of work

3.15 A secondary distinction between the NMW legislation and the Regulations concerns types of work.
3.16 In the NMW legislation, the hours for which an employer must pay a worker the NMW depend on which of four different types of work they perform.
3.17 The Regulations use the concept of three of these types of work: salaried hours work, time work and unmeasured work. However, these concepts are only relevant to calculating the hours worked for the purposes of establishing the basic rate.
3.18 To establish the hours worked as part of calculating the UK additional rate, the Regulations introduce a new concept: hours of UK work. These are the total number of hours of UK work in relation to a relevant service which are worked by the seafarer or treated as hours of UK work in that period.

## Pay reference period

3.19 A pay reference period is a length of time setting out how often someone gets paid. For an equivalence declaration to be valid, a seafarer must be remunerated at a rate that is equal to or exceeds the NMW equivalent for their UK work in relation to the service in each pay reference period.
3.20 A seafarer's pay reference period is either:

- a month, or
- if the seafarer is paid by reference to a period shorter than a month, that period.
3.21 A pay reference period can never be longer than one calendar month.
3.22 For example:
3.23 If a seafarer is paid fortnightly, their pay reference period will be 2 weeks.
3.24 If the seafarer's pay is calculated fortnightly (such as if the seafarer has a 2-week shift pattern) but paid monthly, their pay reference period is a month.
3.25 If the seafarer is paid once every 3 months, their pay reference period will be 1 month.
3.26 When determining the pay reference period, it does not matter when the payment of wages is actually made. The important thing to consider is the period the payment covers.
3.27 For example, a seafarer who is paid for the month of August on the last Thursday of the month will have the same pay reference period as someone paid for the same period on the last day of the month i.e. $1^{\text {st }}$ August to $31^{\text {st }}$ August.


## What is the rate of the NMW equivalent?

3.28 The hourly rate of the NMW equivalent is the same as the NMW hourly rate, with the same age bands and a separate rate for apprentices. It will be uprated in line with changes to the NMW, which take place annually.
3.29 [From 1 April 2024 the rates will be

- $£ 11.44$ for a seafarer who is aged 21 years or over;
- $£ 8.60$ for a seafarer who is aged 18 years -20 years (but is not yet aged 21 years);
- $£ 6.40$ for a seafarer who is aged under 18 years;
- $£ 6.40$ for a seafarer to whom the apprenticeship rate applies.]
3.30 When a seafarer reaches the age of 18 or 21 years they will move on to a new NMW equivalent rate. Employers are responsible for holding accurate information about seafarers' ages to ensure this happens.


## Apprentices

### 3.31 The apprentice rate will apply if:

- the apprentice is under the age of 19
- the apprentice is aged 19 or over and is in the first year of their apprenticeship with their current employer
3.32 Once an apprentice aged 19 or over has completed the first year of their apprenticeship, the applicable NMW equivalent rate for any UK work is the rate which would apply for their age group from the first day of the pay reference period that begins on or after their $19^{\text {th }}$ birthday or completion of the first year of their apprenticeship.
3.33 A seafarer is treated as employed under a contract of apprenticeship if they are engaged in:
- in England, under Government arrangements known as Apprenticeships (Intermediate, Advanced, Higher and Degree Levels), in Scotland, under Government arrangements known as Modern Apprenticeships,
- in Northern Ireland, under Government arrangements known as Apprenticeships NI, or
- in Wales, under Government arrangements known as Foundation Apprenticeships, Apprenticeships or Higher Apprenticeships


## To what work does the rate apply?

3.34 Where an operator provides an equivalence declaration, the NMW equivalent rate applies to hours of UK work undertaken by non-qualifying seafarers. UK work is work which is carried out in the UK and its territorial waters. This includes time spent in UK territorial waters and time spent in UK internal waters (including in a harbour).
3.35 It should be noted that all seafarers are also entitled to NMW under the NMW legislation while working in UK internal waters, which includes any time they spend in a UK harbour. The requirements under the NMW legislation are separate to the requirements under the Act. A valid declaration under the Act does not necessarily indicate compliance under the NMW legislation, and operators should seek to assure themselves that they have met both sets of requirements. Please see guidance on the NMW legislation.
3.36 Under the Territorial Sea Act 1987, the breadth of UK's territorial waters (or territorial sea) is 12 nautical miles. This is measured from baselines established by the

Territorial Sea (Baselines) Order 2014 (S.I 2014 / 1353). The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast. Internal waters include the sea area landward of baselines.

## Who must be paid NMW equivalent for a declaration to be valid?

3.37 See the section on "What is a non-qualifying seafarer?" [IN PART ONE OF GUIDANCE].

## How is it calculated?

3.38 For a declaration to be valid, a seafarer must be remunerated at a rate that is equal to or exceeds the NMW equivalent for their UK work in relation to the service in the pay reference period (see para "Pay Reference Period"). A seafarer's overall hourly rate for their hours of UK work on a service is to be calculated using the following equation:

> basic rate + UK additional rate

### 3.39 Basic Rate

3.40 The basic rate is calculated by the equation:
basic remuneration / total hours of work
where-
i. "basic remuneration" is the basic remuneration in the pay reference period (see section "How remuneration is calculated");
ii. "total hours of work" are the total hours of work in the pay reference period (see section "Calculating hours worked").

### 3.41 UK Additional Rate

3.42 The UK additional rate is calculated by the equation: .

UK additional remuneration / hours of UK work where-
i. "UK additional remuneration" is any UK additional remuneration in the pay reference period (see section "How remuneration is calculated").
ii. "hours of UK work" are any hours of UK work in the pay reference period (see section "Calculating hours worked").

## How remuneration is calculated

3.43 Both basic and UK additional remuneration are calculated by taking the payments from the employer to the seafarer as respects the pay reference period, minus any reductions. Regulations 23-24 and 27-28 make provision for how payments and reductions are apportioned between basic and UK additional remuneration.
3.44 See paragraph "Deductions from pay and payments by seafarers that reduce NMW equivalent pay" to see what counts as a reduction.

## Payments as respects the pay reference period

3.45 The starting point is the seafarer's gross pay allocated to the pay reference period before any deductions are made. The pay allocated to a pay reference period is any pay, either:
i. received by the worker during that period (unless it is pay for the previous period)
ii. earned in that period but not received until the next pay reference period
3.46 For example, if a seafarer works overtime towards the end of one pay reference period it may be too late for the earnings for any additional hours to be included in their pay for that period. If the seafarer is paid for those additional hours in the next pay reference period, the amount will still count towards the previous period in which they earned it. The same payment cannot be counted against more than one pay reference period.
3.47 Payments that are only attributable to hours of UK work, and which would not be paid to the seafarer if the hours of work were not hours of UK work, form part of a seafarer's UK additional remuneration. For example, if a seafarer (aged 21 years or over) has a basic rate of $£ 6.50$ and the employer tops up their pay for hours of UK work by $£ 4.94$ to meet the NMW equivalent, then that extra $£ 4.94$ per hour would count towards the seafarer's UK additional remuneration.
3.48 Any payment that does not form part of a seafarer's UK additional remuneration forms part of their basic remuneration.

## Payments that do not count as remuneration

3.49 The following payments, or elements of a seafarer's pay, made by an employer to a seafarer do not count towards basic or additional remuneration:

- tips, gratuities, service charges and cover charges
- overtime and shift premia
- allowances
- payments by an employer to reimburse a seafarer's expenses
- benefits in kind
- loans
- advances of wages
- pension payments
- lump sums on retirement
- redundancy payments
- rewards under staff suggestions schemes
- shares and share options

Tips, gratuities, service charges and cover charges from customers
3.50 Tips, gratuities, service charges and cover charges do not count towards NMW equivalent pay. This is regardless of whether they are paid through payroll or are given directly to workers.

## Overtime and shift payments

3.51 An employer may pay a seafarer at a higher rate for some of the work they do - for example for working:

- overtime, weekend or night shifts
- on bank holidays
- longer than a certain number of hours
3.52 If they do, the premium element of pay does not count towards pay for the purpose of calculating basic and UK additional remuneration. This only applies to time work and unmeasured work; it does not apply to salaried hours work.


## Allowances

3.53 Some employers might pay workers special allowances over and above standard pay. For example, if the worker:

- works in dangerous conditions
- works unsocial hours
- performs special duties over and above a worker's normal duties
- attends work punctually
- is on call for work
3.54 These allowances don't count towards NMW equivalent pay unless they are consolidated into the seafarer's standard pay or they relate to the seafarer's performance. Note that where payments are consolidated, they may still not count towards basic or UK additional remuneration to the extent that they comprise a premium element, such as for overtime or unsocial hours.
3.55 There is no definition to determine when an allowance is consolidated into standard pay. A view has to be taken as to whether the allowance is amalgamated into the overall pay arrangement. Indications that an allowance is consolidated into standard pay can include (but is not restricted to) circumstances when the allowance is:
- treated in line with the overall pay package, such as being treated the same as annual pay increases or decreases, and/or
- included in pensionable pay, and/or
- included when calculating any overtime rate


## Payments by an employer to reimburse a seafarer's expenses

3.56 If a seafarer is reimbursed for money which they have spent on something to do with their job, the reimbursement does not count as NMW equivalent pay. The refund is a reimbursement of the payment made by the worker and therefore there is no overall effect on NMW equivalent pay.
3.57 However, if a seafarer spends money on something connected with their employment - for example, tools or equipment - and is not repaid by the employer, then that amount will reduce their remuneration for NMW equivalent purposes (see section on "Deductions from pay and payment by seafarers that reduce NMW equivalent pay").

## Benefits in kind

3.58 Benefits in kind do not count towards NMW equivalent pay, even if they have a monetary value.
3.59 Where an employer provides a salary sacrifice flexible benefit scheme, the salary sacrifice will reduce a seafarer's remuneration.
3.60 In a genuine salary sacrifice, a seafarer gives up a portion of their pay in return for a non-cash benefit. As this amount is 'sacrificed' by the worker, it reduces their pay and so cannot be used as part of their pay for NMW equivalent purposes.

## Deductions from pay and payments by seafarers that reduce NMW equivalent pay

3.61 Certain deductions made by the employer from a seafarer's pay, or payments made by the seafarer to the employer, reduce pay for NMW equivalent purposes. For
example, an employer might make deductions from pay for mandatory uniform or equipment costs. This means that those deductions or payments will be taken off the overall pay when calculating renumeration. Certain other deductions or payments do not reduce NMW equivalent pay. This is dealt with in Chapter 3 of Part 5 of the Regulations.
3.62 There is no concept of "illegal deductions", "non-allowable deductions" or "illegal payments" in the Regulations. The arrangements of the parties might reduce the calculation of basic or UK additional remuneration, but that does not make such arrangements "illegal" from the perspective of the Regulations. A deduction, or payment from a seafarer to an employer or operator, only becomes an issue under the Regulations when it risks reducing the seafarer's pay for hours of UK work below the NMW equivalent.
3.63 If a transaction reduces a seafarer's remuneration, it does so in the pay reference period in which it is made, even if it actually relates to another pay reference period.
3.64 This continues to be the case after employment ends. If a deduction is made from a seafarer's final payments, it will still be considered in the normal way to assess whether or not the seafarer is receiving NMW equivalent pay for their hours of UK work. For example, if an employer makes a deduction from a seafarer in their final pay for mandatory training undertaken throughout the employment, the deduction will still be considered in the same way as in any other pay reference period. If the deducted amount reduces the seafarer's remuneration for their hours of UK work below the NMW equivalent rate for that pay reference period, the seafarer will be underpaid.
3.65 The Regulations apportion deductions between basic and UK additional remuneration, using the formulae in regulations 27 and 28. The apportionment depends on the proportion of the seafarer's hours of UK work compared to total hours of work.
3.66 For example:
3.67 A seafarer works a total of 150 hours, of which 50 of those hours are hours of UK work. In a pay reference period, the seafarer's employer deducts $£ 100$ from their salary for a uniform. Applying the formulae in regulations 27 and 28:

- The reduction in basic remuneration:
- 100 [total reduction] x (150 [total hours of work] / (150 [total hours of work] + 50 [hours of UK work])) = £75

The reduction in basic remuneration would be $£ 75$.

- The reduction in UK additional remuneration:
- 100 [total reduction] x (50 [UK hours of work] / (150 [total hours of work] + 50 [UK hours of work])) $=£ 25$

The reduction in additional remuneration would be $£ 25$.

## Deductions or payments for the employer's or operator's own use and benefit

3.68 A deduction by the employer or operator, or a payment from the seafarer to the employer or operator, is considered to be for an employer's or operator's 'own use and benefit' where they are free to use that money in any way they wish.

It does not matter whether or not:

- the employer or operator makes profit from the transaction
- the deduction is made from gross or net pay
- the seafarer agrees to the deduction/payment
- the seafarer benefits from the arrangement
3.69 For example, if the employer or operator requires a seafarer to wear a uniform, the cost of which is deducted from the seafarer's wages, the deduction will be for the employer or operator's own use and benefit. That remains the case even if the seafarer is permitted to keep the uniform at the end of their employment. The cost of the uniform would then be deducted from pay for the purposes of calculating renumeration for the purposes of determining if the NMW equivalent is being paid.
3.70 However, some deductions and payments, despite being for the employer's or operator's own use and benefit, do not reduce a seafarer's remuneration for the purpose of determining whether the NMW equivalent is being paid. These are listed in regulation 29(2):
- deductions or payments in respect of the seafarer's conduct or any other event where the worker is contractually liable (for example, a seafarer working in an onboard restaurant breaks a glass and their wages are docked to pay for the breakage)
- deductions or payments in respect of an agreed loan or advance of wages
- deductions or payments in respect of an accidental overpayment of wages
- deductions or payments in respect of the purchase by the seafarer of shares, stocks, bonds, share options, or a share in a partnership
- payments (but not deductions) where the seafarer has purchased goods or services from the employer or operator (unless this purchase is made to comply with a requirement imposed by the employer or operator in connection with the employment and is not reimbursed by the employer or operator)
3.71 It should be noted that deductions made to reflect a seafarer's purchase of goods or services from the employer or operator are not included in this list, as they would still be deemed to reduce a seafarer's pay for NMW equivalent purposes.
3.72 If a seafarer chooses to purchase goods or services - from their employer or the operator - that are not in respect of an expense incurred in connection with their employment or a requirement imposed on the seafarer by the employer or operator, then the effect it will have on NMW equivalent remuneration will depend on the way any cost for this is covered.
3.73 If a seafarer chooses to pay for the purchase via a payment from the seafarer to the employer or operator (that is, the seafarer pays for the goods after they have been paid their wages), the payment will not reduce remuneration for NMW equivalent purposes.
3.74 If the same purchase is paid for via a deduction from wages then this will reduce remuneration for NMW equivalent purposes and this may bring pay below NMW equivalent. It makes no difference if the seafarer freely chooses to make the purchase and/or signs their agreement to the purchase.


## Expenditure in connection with employment and living accommodation

3.75 Any deduction from a seafarer's pay by the employer or operator for the following purposes will always reduce a seafarer's remuneration for the purposes of determining whether the NMW equivalent has been paid:

- deductions as respects expenditure that is incurred in connection with their employment
- deductions as respects the provision of living accommodation by the employer or operator
3.76 Where the expenditure or provision of accommodation is covered by the seafarer making a payment, either to the employer or operator, or a third party, this will reduce a seafarer's remuneration unless they are reimbursed by the employer or operator. Reimbursements should be made within a reasonable period of time.


## Determining total hours of work: types of work

3.77 To calculate a seafarer's basic rate it is necessary to establish their total hours of work in the pay reference period. The calculation for the total hours of work will depend on the type of work they perform and whether they are:

- paid an annual salary, under a contract for a basic number of hours each year (known as salaried hours work)
- paid by the hour (known as time work)
- paid in any other ways (known as unmeasured work)


## Salaried hours work

3.78 Salaried hours work requires all the following to apply to a seafarer:

- they are entitled under their contract to be paid for a set basic number of hours in a year
- they are entitled under their contract to an annual salary for those basic hours
- they are not entitled under their contract to any other payment for their basic hours other than the salary, or a performance bonus or salary premium (see below)
- they are 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.
3.79 If a seafarer is employed to work only during some parts of the year but is paid an annual salary in instalments throughout the year then they perform salaried hours work.
3.80 So long as the instalments remain the same, the fact that a seafarer actually works more hours in some weeks or months and less in others does not prevent them meeting the requirements of salaried hours work.
3.81 Some variations in the weekly or monthly instalments are ignored for this purpose, where paying in equal instalments may not be practicable. For example, if the variation results from:
- payment of a performance bonus
- payment of a salary premium, such as for working on a bank holiday
- a pay increase
- pay for working hours in addition to the basic hours, such as separate overtime payments (See section above on "Overtime")
- the seafarer starting or leaving part-way through the week or month


## What is a salaried hours contract?

3.82 To be a salaried hours contract, the contract between the employer or operator and the seafarer should set out:

- a basic number of hours for which the seafarer is to be paid (for example 2,000 hours in a year) and
- that the seafarer is entitled to an annual salary.
3.83 The contract does not have to show the total basic hours for a complete year but it is better to do so. However, it must be possible to precisely calculate what the total basic annual number of hours is in relation to the full year.
3.84 For example, if a contract sets out a monthly number of hours it is possible to work out the annual total by multiplying by 12. It may be slightly less obvious where a contract states a weekly number of hours, but an employer or operator may use some form of weekly multiplier, such as $52,52.14$ or 52.18 or some other formula to arrive at an annual total. A statement of weekly hours is compatible with salaried hours work, but the important thing is the employer or operator must be able to demonstrate how the basic hours for a year have been ascertained.
3.85 By way of further example, some seafarers may undertake flexible working patterns which mean that their actual working hours vary from week to week. In these cases, it should still be possible to calculate their basic annual hours, in which case if they are paid an annual amount (and the other conditions discussed above are met) they will be doing salaried hours work.


## Time that counts towards total hours of work

3.86 Generally, the total hours of salaried hours work include hours where a seafarer is:

- at work and required to be at work
- on standby or on-call at or near their place of work, unless they are at home
- kept at their place of work but cannot work, for example because of machine breakdown
- travelling for the purpose of working
- training or travelling from a workplace to training


## Absences from work

3.87 If a seafarer doing salaried hours work is paid their normal salary while they are absent from work and this forms a part of their employment contract, the time of the absence counts towards the seafarer's time worked for determining their total hours of work. For example, during rest breaks, lunch breaks, holidays, sickness absence or maternity / paternity / adoption leave.
3.88 If a seafarer's basic hours under their employment contract do not include pay for these absences (that is, if they are not covered by the annual salary), then the hours of absence do not count towards the seafarer's total hours of work.
3.89 For example, suppose a seafarer is contractually entitled to their full basic rate of $£ 10$ an hour for the first 6 weeks of sick leave and after 6 weeks they are entitled to be paid half-pay of $£ 5$ an hour. The hours of absence paid at their full pay rate count as part of their basic contractual hours because they are treated as if they are at work. However, once they are paid half-pay for the absence this time paid at the reduced rate is not counted as work time.

## Time that does not count towards total hours of work

3.90 The only hours that do not count towards salaried hours work are any of the following:

- hours not worked and paid at less than normal pay (see "Absences from work") for example - if a seafarer is paid a proportion of their normal salary, or nothing, during sick leave
- during unpaid leave - because this time is not part of their basic annual hours in their employment contract
- hours they are taking industrial action - it makes no difference whether the seafarer remains entitled to full or partial pay under their employment contract
- periods the seafarer is not working but is available for work:
- at home
- while sleeping at or near the place of work (and suitable facilities for sleeping are provided)
- hours training where the training is not required by the employer or operator and does not take place at a time when the seafarer would otherwise be working
- travelling between home and work


## Calculating basic annual hours

3.91 If a seafarer only works up to their basic annual hours, the number of hours they have worked in a particular pay reference period is calculated from the number of salaried hours for each pay reference period by dividing the seafarer's basic annual hours by the number of payments in the year. For weekly payments, basic hours are divided by 52 , for fortnightly payments they are divided by 26 , for 4 weekly payments they are divided by 13, and for monthly payments they are divided by 12. For any other length of pay reference period, 365 days should be divided by the number of days in the pay reference period. Basic hours are then divided by this figure.
3.92 If there were any absences in the pay reference period that reduce total hours of work (including time taking part in industrial action), these will then need to be subtracted.

## Excess hours worked

3.93 Once a seafarer doing salaried hours work has worked hours in excess of their basic annual hours in the calculation year then it is necessary to check that all the excess hours are taken into account when calculating their total hours of work for the purposes of determining their basic rate.
3.94 First, work out whether the seafarer has worked more than their basic hours in the calculation year.

## Example calculation 1

3.95 A seafarer has a contract which meets the requirements of salaried hours work in the Regulations. Their contract is to work 2,040 basic hours in the year, for which they are paid an annual salary of $£ 18,000$, in equal monthly instalments of $£ 1,500$. Their calculation year is 1 April to 31 March.
3.96 The seafarer does not work any excess hours in April, and there are no absences that reduce the total hours of work. The total hours of work in the April pay reference period are $2,040 / 12=170$. As there are no excess hours, no further calculations are necessary.
3.97 Their basic rate for April is therefore $£ 1,500 / 170=£ 8.82$ an hour.
3.98 However, once those 2,040 hours have been worked (including any hours that count as basic hours when the worker is absent), the extra unpaid hours will need to be taken into account for the purpose of determining the total hours of work and calculating the seafarer's basic rate.
3.99 Please note that the individual calculations to identify the total hours of work in each pay reference period may not result in exactly the same figure as the total worked in the year. This is caused by a rounding effect due to the variation in the number of days in each calendar month.

## Example calculation 2

3.100 A seafarer's calculation year is 1 April to 31 March and their contract specifies basic annual hours of 2,040 for which they are paid $£ 18,000$ per annum ( $£ 1,500$ per month). The basic hours per month are 170 (2,040 divided by 12).
3.101 The seafarer exceeded their annual contracted basic hours part-way through the February pay reference period. In order to calculate the total hours of work for February and March, the following steps need to be followed:

1. Identify the actual day when the basic hours are exceeded. In this example, say the seafarer reached 2,040 basic hours for the calculation year on 11 February.
2. For the 10 days before the basic hours were exceeded, calculate the hours as follows:

- divide 10 days in the pay reference period by 365 days in a full year (include nonworking days): $10 / 365=0.027$
- multiply the annual basic hours $(2,040)$ by the answer above: $2,040 \times 0.027=55.9$ hours

3. Repeat step 2 for the remaining days in the pay reference period after the basic hours were exceeded (in this example 18 days, as it is not a leap year), resulting in $2,040 \mathrm{x}$ $0.049=100.6$ hours
4. Identify the actual hours worked in February after the basic hours were exceeded - in this example this is the hours worked from 11 February to the end of February, say 70 hours.
5. Add together these 3 sets of hours $55.9+100.6+70=226.5$ hours. This is the total hours of work for the February pay reference period. Therefore, the basic rate for February is $£ 1,500 / 226.5=£ 6.62$ per hour.
6. For March the seafarer works (say) 170 excess hours (all hours worked in March are 'excess' hours as the basic hours are reached in February). These would be added to the 170 basic contractual hours for March (calculated by dividing the 2,040 annual hours by 12). Therefore, the total hours of work for the March pay reference period is 340 hours, and the basic rate is $£ 1,500 / 340=£ 4.41$ per hour.

## Calculation year

3.102 A seafarer's calculation year depends on how frequently they are paid (e.g. monthly or weekly).
3.103 If they start on the first day of a month, say 1 May, their calculation year will be 1 May to 30 April in the following year while continuing in the same job.
3.104 If they start part way through a month, say 15 May, their calculation year will be 15 May to 31 May of the following year and then starting on 1 June and ending on 31 May each subsequent year while continuing in the same job.
3.105 For seafarers paid other than monthly (that is, weekly or fortnightly) - for example if they start on 22 May their calculation year will be 22 May in year 1 until 21 May the following year. It will then start on 22 May each subsequent year while continuing in the same job.

## Contract changes

3.106 Where a seafarer does salaried hours work and their contractual hours are increased or reduced at some point in the calculation year, this will affect whether and when the worker works hours in excess of their basic hours. There are 2 methods for calculating the seafarer's hours in this situation. Which of them applies depends on the circumstances.
3.107 The first method is used to identify what the basic hours are before the contract is changed. In this case, the basic hours are the same as the hours that were fixed before the change takes place.
3.108 For example, an annual contract of 2,040 hours runs from April to March, but the contract's hours are reduced to 1,900 hours from 1 November. If the basic hours are calculated any time before November, the number is 2,040.
3.109 The second method is used to identify what the basic hours are after the contract is changed.

Example scenario - to identify basic hours after a contract is changed
3.110 An annual contract of 2,040 hours runs from 1 April to 31 March, but the contract's hours are reduced to 1,900 from 1 November. In order to identify the basic hours from 1 November onwards, it is necessary to get the right proportion of annual hours in the right part of the year.
3.111 To do this:

1. Calculate the number of days from the date of the change to the end of the calculation year, for example from 1 November there are 151 days remaining of the calculation year.
2. Divide that number by 365 and multiply by the new contractual hours (1,900): 151 / $365 \times 1,900=786$ hours.
3. Calculate how many days there were from the start of the calculation year to the day before the contract was changed: 365-151 $=214$.
4. Divide the figure from step 3 by 365 and multiply by the previous contractual hours (2,040): 214 / $365 \times 2,040=1,196$ hours.
5. Add together the figures from steps 2 and 4 .
6. From 1 November onwards, the basic hours are: $786(\operatorname{step} 2)+1,196($ step 4$)=$ 1,982 hours.
3.112 If the contractual hours are changed more than once during the calculation year, the same method is used to get the right proportion of hours in the right part of the year.

## Termination of employment

3.113 If a seafarer who does salaried hours work leaves before the end of the calculation year, they may have worked hours in excess of the basic hours for the part of the year for which they were employed. In such circumstances, the excess hours should be treated as having been worked in the seafarer's final pay reference period which will have the effect of increasing the total hours of work and reducing the seafarer's basic rate for that period.
3.114 For example, a 29-year-old seafarer has a contract to work 2,040 hours a year. That is 170 hours per month $(2,040 / 12)$. They are paid an annual salary of $£ 18,000$, in equal monthly instalments of $£ 1,500$. They leave after 6 months, having worked 1,150 hours.
3.115 To calculate the hours treated as worked in the final pay reference period:

1. Work out how many basic hours the seafarer should have worked under their contract: 6 months $\times 170$ hours $=1,020$ hours.
2. Calculate their excess hours: $1,150-1,020=130$ hours.
3. Determine the total hours the seafarer is treated as having worked in their final pay reference period by adding together their basic hours and the excess hours: $170+130=$ 300 hours.

The seafarer's basic rate for the final pay reference period is $£ 1,500 / 300$ hours $=£ 5$ per hour.

## Time Work

## What is time work?

3.116 If a seafarer's contract provides that they are entitled to be paid according to the number of hours they are at work, that work is time work. The hours of work might be constant or they might vary each day. Alternatively, the seafarer may be on a contract for a week or a month to do a particular job and they are paid for the hours done each week or month. That is also time work. Generally, any seafarer whose pay varies depending on the number of hours they work is likely to be performing time work.
3.117 A seafarer's total hours of time work in a pay reference period can be identified by recording every hour worked, or treated as worked under the Regulations.
3.118 The hours of work that count as time work include:

- Hours when a seafarer is working.
- Hours when a seafarer is available, and required to be available, at or near their place of work for the purposes of working (but not at home). This only includes hours when the seafarer is awake for the purposes of working, even if a seafarer by arrangement sleeps onboard the ship and the employer or operator provides suitable facilities for sleeping.
- Hours spent training, when the seafarer would otherwise be doing time work.
- Hours when a seafarer is travelling, when they would otherwise be working unless the travel is between a seafarer's home/temporary residence and a place of work or a place where an assignment is carried out.
3.119 For time work, the time that does not count as working time includes any time spent:
- away from work - even if they are paid for that time - including rest breaks, holidays, sick leave, maternity/paternity/adoption leave, industrial action
- travelling between home and work (unless the seafarer works whilst travelling) regardless of whether the seafarer has a fixed place of work


## Unmeasured work

3.120 Work is unmeasured work if it is not salaried hours work or time work. Unmeasured work could meet some of the conditions of time work, but not all the conditions (for example they might not be entitled under their contract to be paid according to the number of hours they are at work). As it would also not be salaried hours work (the worker is not paid an annual salary), it must be unmeasured work.
3.121 A seafarer's total hours of unmeasured work in a pay reference period can be identified by recording every hour worked, or treated as worked under the Regulations.
3.122 The hours of work that count as unmeasured work include:

- hours when a seafarer is working
- hours when a seafarer is available, and required to be available, at or near their place of work for the purposes of working (but not at home). This only includes hours when the seafarer is awake for the purposes of working, even if a seafarer by arrangement sleeps onboard the ship and the employer or operator provides suitable facilities for sleeping.
- hours spent training, when the seafarer would otherwise be doing unmeasured work
- hours when a seafarer is travelling, when they would otherwise be working unless the travel is between a seafarer's home/temporary residence and a place of work or a place where an assignment is carried out.
3.123 For unmeasured work, the time that does not count as working time includes any time spent:
- away from work - even if they are paid for that time - including rest breaks, holidays, sick leave, maternity/paternity/adoption leave, industrial action
- travelling between home and work (unless the seafarer works whilst travelling) regardless of whether the seafarer has a fixed place of work


## Determining hours of UK work

3.124 To calculate a seafarer's UK additional rate it is necessary to establish their hours of UK work in the pay reference period. The method of calculating hours of UK work is the same for all seafarers, irrespective of the type of work they are doing for the purposes of calculating the total hours of work.
3.125 A seafarer's hours of UK work in a pay reference period can be identified by recording every hour worked, or treated as worked under the Regulations in the UK or its territorial waters.
3.126 The hours of work that count as hours of UK work include:

- Hours when a seafarer is doing UK work
- Hours where a seafarer is available, and required to be available, at or near a place of work for the purposes of doing UK work (but not at home). This only includes hours where the seafarer is awake, even if a seafarer by arrangement sleeps onboard the ship and the employer or operator provides suitable facilities for sleeping.
- Hours spent training when they would otherwise be doing UK work.
- Hours when a seafarer is travelling, where they would otherwise be doing UK work, unless the travel is between a seafarer's home/temporary residence and the place of work or a place where an assignment is carried out.
3.127 For UK work, the time that does not count as working time includes any time spent:
- away from work - even if they are paid for that time - including rest breaks, holidays, sick leave, maternity/paternity/adoption leave, industrial action
- travelling between home and work (unless the seafarer works whilst travelling) regardless of whether the seafarer has a fixed place of work


## Currency conversion

3.128 A seafarer may be paid in a currency other than GBP. In that case, an employer or operator looking to pay the NMW equivalent must make sure that the seafarer's pay would meet the NMW equivalent hourly rate when converted into GBP. Employers should assure themselves that they have used a reasonable exchange rate and may want to refer to: Exchange rates from HMRC in CSV and XML format - GOV.UK (www.gov.uk)

