

Draft regulations cover note.

These regulations were laid before Parliament on 3rd May 2000 for approval by affirmative resolution. The regulations will be considered by both Houses and can be approved or rejected. Affirmative resolution allows no amendments.

Subject to Parliamentary approval, the regulations will come into force on 1st July 2000.

The final published version of these regulations will be available in due course from The Stationery Office. They will not differ from the version available here.

Draft Regulations laid before Parliament under section 42(2) of the Employment Relations Act 1999 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2000 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

Made 2000

Coming into force 1st July 2000

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SCHEDULE: Amendments to primary legislation.

Whereas a draft of the following Regulations was laid before Parliament in accordance with section 42(2) of the Employment Rights Act 1999^(a) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 19 of the Employment Relations Act 1999, hereby makes the following Regulations:

PART I

GENERAL AND INTERPRETATION

Citation, commencement and interpretation

1. —(1) These Regulations may be cited as the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and shall come into force on 1st July 2000.

(2) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996^(b);

“contract of employment” means a contract of service or of apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“employee” means an individual who has entered into or works under or (except where a provision of these Regulations otherwise requires) where the employment has ceased, worked under a contract of employment;

“employer”, in relation to any employee or worker, means the person by whom the employee or worker is or (except where a provision of these Regulations otherwise requires) where the employment has ceased, was employed;

“pro rata principle” means that where a comparable full-time worker receives or is entitled to receive pay or any other benefit, a part-time worker is to receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his weekly hours bears to the number of weekly hours of the comparable full-time worker;

“worker” means an individual who has entered into or works under or (except where a provision of these Regulations otherwise requires) where the employment has ceased, worked under –

- (a) a contract of employment; or

^(a) 1999 c.26.

^(b) 1996 c.18.

- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

(3) In the definition of the pro rata principle and in regulations 3 and 4 “weekly hours” means the number of hours a worker is required to work under his contract of employment in a week in which he has no absences from work and does not work any overtime or, where the number of such hours varies according to a cycle, the average number of such hours.

Meaning of full-time worker, part-time worker and comparable full-time worker

2. —(1) A worker is a full-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker’s employer under the same type of contract, is identifiable as a full-time worker.

(2) A worker is a part-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker’s employer under the same type of contract, is not identifiable as a full-time worker.

(3) For the purposes of paragraphs (1), (2) and (4), the following shall be regarded as being employed under different types of contract –

- (a) employees employed under a contract that is neither for a fixed term nor a contract of apprenticeship;
- (b) employees employed under a contract for a fixed term that is not a contract of apprenticeship;
- (c) employees employed under a contract of apprenticeship;
- (d) workers who are neither employees nor employed under a contract for a fixed term;
- (e) workers who are not employees but are employed under a contract for a fixed term;
- (f) any other description of worker that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract.

(4) A full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to the part-time worker takes place -

- (a) both workers are—
 - (i) employed by the same employer under the same type of contract, and
 - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and

- (b) the full-time worker works or is based at the same establishment as the part-time worker or, where there is no full-time worker working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

Workers becoming part-time

3. –(1) This regulation applies to a worker who -

- (a) was identifiable as a full-time worker in accordance with regulation 2(1); and
- (b) following a termination or variation of his contract, continues to work under a new or varied contract, whether of the same type or not, that requires him to work for a number of weekly hours that is lower than the number he was required to work immediately before the termination or variation.

(2) Notwithstanding regulation 2(4), regulation 5 shall apply to a worker to whom this regulation applies as if he were a part-time worker and as if there were a comparable full-time worker employed under the terms that applied to him immediately before the variation or termination.

(3) The fact that this regulation applies to a worker does not affect any right he may have under these Regulations by virtue of regulation 2(4).

Workers returning part-time after absence

4 –(1) This regulation applies to a worker who -

- (a) was identifiable as a full-time worker in accordance with regulation 2(1) immediately before a period of absence (whether the absence followed a termination of the worker's contract or not);
- (b) returns to work for the same employer within a period of less than twelve months beginning with the day on which the period of absence started;
- (c) returns to the same job or to a job at the same level under a contract, whether it is a different contract or a varied contract and regardless of whether it is of the same type, under which he is required to work for a number of weekly hours that is lower than the number he was required to work immediately before the period of absence.

(2) Notwithstanding regulation 2(4), regulation 5 shall apply to a worker to whom this regulation applies (“the returning worker”) as if he were a part-time worker and as if there were a comparable full-time worker employed under –

- (a) the contract under which the returning worker was employed immediately before the period of absence; or
- (b) where it is shown that, had the returning worker continued to work under the contract mentioned in sub-paragraph (a) a variation would have been made to its terms during the period of absence, the contract mentioned in that sub-paragraph including that variation.

(3) The fact that this regulation applies to a worker does not affect any right he may have under these Regulations by virtue of regulation 2(4).

PART II
RIGHTS AND REMEDIES

Less favourable treatment of part-time workers

5. —(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker —

- (a) as regards the terms of his contract; or
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) The right conferred by paragraph (1) applies only if—

- (a) the treatment is on the ground that the worker is a part-time worker, and
- (b) the treatment is not justified on objective grounds.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

(4) A part-time worker paid at a lower rate for overtime worked by him in a period than a comparable full-time worker is or would be paid for overtime worked by him in the same period shall not, for that reason, be regarded as treated less favourably than the comparable full-time worker where, or to the extent that, the total number of hours worked by the part-time worker in the period, including overtime, does not exceed the number of hours the comparable full-time worker is required to work in the period, disregarding absences from work and overtime.

Right to receive a written statement of reasons for less favourable treatment

6. —(1) If a worker who considers that his employer may have treated him in a manner which infringes a right conferred on him by regulation 5 requests in writing from his employer a written statement giving particulars of the reasons for the treatment, the worker is entitled to be provided with such a statement within twenty-one days of his request.

(2) A written statement under this regulation is admissible as evidence in any proceedings under these Regulations.

(3) If it appears to the tribunal in any proceedings under these Regulations—

- (a) that the employer deliberately, and without reasonable excuse, omitted to provide a written statement, or
- (b) that the written statement is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the employer has infringed the right in question.

(4) This regulation does not apply where the treatment in question consists of the dismissal of an employee, and the employee is entitled to a written statement of reasons for his dismissal under section 92 of the 1996 Act^(a).

Unfair dismissal and the right not to be subjected to detriment

7. —(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part X of the 1996 Act if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a) that the worker has—

- (i) brought proceedings against the employer under these Regulations;
- (ii) requested from his employer a written statement of reasons under regulation 6;
- (iii) given evidence or information in connection with such proceedings brought by any worker;
- (iv) otherwise done anything under these Regulations in relation to the employer or any other person;
- (v) alleged that the employer had infringed these Regulations; or
- (vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations, or

(b) that the employer believes or suspects that the worker has done or intends to do any of the things mentioned in sub-paragraph (a).

(4) Where the reason or principal reason for dismissal or, as the case may be, ground for subjection to any act or deliberate failure to act, is that mentioned in paragraph (3)(a)(v), or (b) so far as it relates thereto, neither paragraph (1) nor paragraph (2) applies if the allegation made by the worker is false and not made in good faith.

(5) Paragraph (2) does not apply where the detriment in question amounts to the dismissal of an employee within the meaning of Part X of the 1996 Act.

Complaints to employment tribunals etc.

8. —(1) Subject to regulation 7(5), a worker may present a complaint to an employment tribunal that his employer has infringed a right conferred on him by regulation 5 or 7(2).

^(a) Section 92(3) was amended by the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999 (S.I. 1999/1436), Article 3. Section 92(4)(b) was amended by the Employment Relations Act 1999, section 9 and paragraphs 1 and 5 of Part III of Schedule 4.

(2) Subject to paragraph (3), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months (or, in a case to which regulation 13 applies, six months) beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.

(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of calculating the date of the less favourable treatment or detriment under paragraph (2)—

- (a) where a term in a contract is less favourable, that treatment shall be treated, subject to paragraph (b), as taking place on each day of the period during which the term is less favourable;
- (b) where an application relies on regulation 3 or 4 the less favourable treatment shall be treated as occurring on, and only on, in the case of regulation 3, the first day on which the applicant worked under the new or varied contract and, in the case of regulation 4, the day on which the applicant returned; and
- (c) a deliberate failure to act contrary to regulation 5 or 7(2) shall be treated as done when it was decided on.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (4)(c) to decide not to act—

- (a) when he does an act inconsistent with doing the failed act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to have done the failed act if it was to be done.

(6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground for the less favourable treatment or detriment.

(7) Where an employment tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable—

- (a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates;
- (b) ordering the employer to pay compensation to the complainant;
- (c) recommending that the employer take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

(8) Where a tribunal finds a complaint to be well founded on the ground that the complainant has been treated less favourably in respect of either the terms on which he is afforded access to membership of an occupational pension scheme or his treatment under the rules of such a scheme, the steps taken by a tribunal under paragraph (7) as regards that less favourable treatment shall not relate to a period earlier than two years before the date on which the complaint was presented.

(9) Where a tribunal orders compensation under paragraph (7)(b), the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances (subject to paragraph (8)) having regard to—

- (a) the infringement to which the complaint relates, and
- (b) any loss which is attributable to the infringement having regard, in the case of an infringement of the right conferred by regulation 5, to the pro rata principle except where it is inappropriate to do so.

(10) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the infringement, and
- (b) loss of any benefit which he might reasonably be expected to have had but for the infringement.

(11) Compensation in respect of treating a worker in a manner which infringes the right conferred on him by regulation 5 shall not include compensation for injury to feelings.

(12) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

(13) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(14) If the employer fails, without reasonable justification, to comply with a recommendation made by an employment tribunal under paragraph (7)(c) the tribunal may, if it thinks it just and equitable to do so—

- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under paragraph (7)(b); or
- (b) make an order under paragraph (7)(b).

Restrictions on contracting out

9. Section 203 of the 1996 Act^(a) (restrictions on contracting out) shall apply in relation to these Regulations as if they were contained in that Act.

PART III

MISCELLANEOUS

Amendments to primary legislation

10. The amendments in the Schedule to these Regulations shall have effect.

^(a) Section 203 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c.8); section 203(2)(d) was amended by the Employment Relations Act 1999, section 44 and Schedule 9.3.

Liability of employers and principals

11.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as also done by his employer, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for the employer with the authority of the employer shall be treated for the purposes of these Regulations as also done by the employer.

(3) In proceedings under these Regulations against any person in respect of an act alleged to have been done by a worker of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the worker from—

- (a) doing that act; or
- (b) doing, in the course of his employment, acts of that description.

PART IV

SPECIAL CLASSES OF PERSON

Crown employment

12.—(1) Subject to regulation 13, these Regulations have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees and workers.

(2) In paragraph (1) “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(3) For the purposes of the application of the provisions of these Regulations in relation to Crown employment in accordance with paragraph (1)—

- (a) references to an employee and references to a worker shall be construed as references to a person in Crown employment to whom the definition of employee or, as the case may be, worker is appropriate; and
- (b) references to a contract in relation to an employee and references to a contract in relation to a worker shall be construed as references to the terms of employment of a person in Crown employment to whom the definition of employee or, as the case may be, worker is appropriate.

Armed forces

13. -(1) These Regulations, shall have effect in relation—

- (a) subject to paragraphs (2) and (3) and apart from regulation 7(1), to service as a member of the armed forces, and

- (b) to employment by an association established for the purposes of Part XI of the Reserve Forces Act 1996^(a).

(2) These Regulations shall not have effect in relation to service as a member of the reserve forces in so far as that service consists in undertaking training obligations –

- (a) under section 38, 40 or 41 of the Reserve Forces Act 1980^(b),
- (b) under section 22 of the Reserve Forces Act 1996,
- (c) pursuant to regulations made under section 4 of the Reserve Forces Act 1996,

or consists in undertaking voluntary training or duties under section 27 of the Reserve Forces Act 1996.

(3) No complaint concerning the service of any person as a member of the armed forces may be presented to an employment tribunal under regulation 8 unless—

- (a) that person has made a complaint in respect of the same matter to an officer under the service redress procedures, and
- (b) that complaint has not been withdrawn.

(4) For the purposes of paragraph (3)(b), a person shall be treated as having withdrawn his complaint if, having made a complaint to an officer under the service redress procedures, he fails to submit the complaint to the Defence Council under those procedures.

(5) Where a complaint of the kind referred to in paragraph (3) is presented to an employment tribunal, the service redress procedures may continue after the complaint is presented.

(6) In this regulation, “the service redress procedures” means the procedures, excluding those which relate to the making of a report to Her Majesty, referred to in section 180 of the Army Act 1955^(a), section 180 of the Air Force Act 1955^(b) and section 130 of the Naval Discipline Act 1957^{(c)(d)}.

House of Lords staff

14.—(1) These Regulations have effect in relation to employment as a relevant member of the House of Lords staff as they have effect in relation to other employment.

(2) In this regulation “relevant member of the House of Lords staff” means any person who is employed under a contract with the Corporate Officer of the House of Lords by virtue of which he is a worker.

House of Commons staff

15.—(1) These Regulations have effect in relation to employment as a relevant member of the House of Commons staff as they have effect in relation to other employment.

^(a) 1996 c.14.

^(b) 1980 c.9.

^(a) 1955 c.18.

^(b) 1955 c.19.

^(c) 1957 c.53.

^(d) Each of the sections referred to in paragraph (5) was substituted by section 20 of the Armed Forces Act 1996 (c.46).

(2) In this regulation “relevant member of the House of Commons staff” means any person—

- (a) who was appointed by the House of Commons Commission; or
- (b) who is a member of the Speaker’s personal staff.

Police service

16.—(1) For the purposes of these Regulations, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as a police cadet shall be treated as employment, under a contract of employment, by the relevant officer.

(2) In this regulation “the relevant officer” means—

- (a) in relation to a member of a police force or a special constable or police cadet appointed for a police area, the chief officer of police (or, in Scotland, the chief constable);
- (b) in relation to a person holding office under section 9(1)(b) or 55(1)(b) of the Police Act 1997^(e) (police members of the National Criminal Intelligence Service and the National Crime Squad), the Director General of the National Criminal Intelligence Service or, as the case may be, the Director General of the National Crime Squad; and
- (c) in relation to any other person holding the office of constable or an appointment as a police cadet, the person who has the direction and control of the body of constables or cadets in question.

Holders of judicial offices

17. These Regulations do not apply to any individual in his capacity as the holder of a judicial office if he is remunerated on a daily fee-paid basis.

^(e) 1997 c.50.

Amendments to primary legislation

1. The Employment Tribunals Act 1996^(a) shall be amended as follows—

(a) In section 18(1)^(b) (cases where conciliation provisions apply)—

(i) at the end of paragraph (ff), the word “or” shall be omitted, and

(ii) after paragraph (g), there shall be inserted—

“or

(h) arising out of a contravention, or alleged contravention of regulation 7(2) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.”.

(b) In section 21 (jurisdiction of the Employment Appeal Tribunal) in subsection (1)^(c) (which specifies the proceedings and claims to which the section applies)—

(i) at the end of paragraph (h), the word “or” shall be omitted,

(ii) after paragraph (i) there shall be inserted—

“or

(j) the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.”.

2. -(1) In section 105 of the 1996 Act (redundancy as unfair dismissal) in subsection (1)(c)^(d) (which requires one of a specified group of subsections to apply for a person to be treated as unfairly dismissed) for “(7D)” there shall be substituted “(7E)” and after subsection (7D) there shall be inserted -

“(7E) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (unless the case is one to which paragraph (4) of that regulation applies).”.

^(a) 1996 c.17. Under section 1(2) of the Employment Rights (Dispute Resolution) Act 1998, the Act, formerly the Industrial Tribunals Act 1996, may now be cited as the Employment Tribunals Act 1996.

^(b) Section 18(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

^(c) Section 21 has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

^(d) Section 105 has been amended on a number of occasions to specify additional circumstances in which an employee dismissed by reason of redundancy is to be regarded as unfairly dismissed.

(2) In section 108 of the 1996 Act (exclusion of right: qualifying period of employment) in subsection (3)^(e) (cases where no qualifying period of employment is required) the word “or” at the end of paragraph (h) shall be omitted and after paragraph (hh) there shall be inserted -

“or

- (i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies.”.

(3) In section 109 of the 1996 Act (exclusion of right: upper age limit) in subsection (2)^(f) (cases where upper age limit does not apply) the word “or” at the end of paragraph (h) shall be omitted and after paragraph (hh) there shall be inserted -

“or

- (i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies.”.

^(e) Section 108(3) was amended by S.I. 1999/1436, Article 3.

^(f) Section 109(2) has been amended on a number of occasions to specify additional cases where the upper age limit does not apply.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 1 July 2000 and implement Directive 97/81/EC (normally referred to as the Part-time Work Directive) as extended to the United Kingdom by Directive 98/23/EC, in Great Britain.

The Regulations give part-time workers the right in principle not to be treated less favourably than full-time workers of the same employer who work under the same type of employment contract. In addition a right is given to workers who become part-time or, having been full-time, return part-time after absence, to be treated not less favourably than they were before going part-time

The rights apply where the less favourable treatment is on the ground that the worker is part-time and is not justified on objective grounds.

The rights are exercisable by complaint to an employment tribunal.

A Regulatory Impact Assessment of the costs and benefits that these Regulations would have is available to the public from Employment Relations 5A, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.