

## SCHEDULES

### SCHEDULE 5

Section 33

#### SUNDAY WORKING

##### *Employment Rights Act 1996*

- 1 The Employment Rights Act 1996 is amended as follows.
- 2 In section 41 (opted-out shop workers and betting workers), for subsection (3) substitute—
  - “(3) In this Act “notice period”, in relation to an opted-out shop worker or an opted-out betting worker, means—
    - (a) in the case of an opted-out shop worker who does shop work in or about a large shop, the period of one month beginning with the day on which the opting-out notice concerned was given;
    - (b) in any other case, the period of three months beginning with that day.

This subsection is subject to sections 41D(2) and 42(2).”
- 3 After section 41 insert—

##### **“41A Notice of objection by shop workers to working additional hours on Sunday**

- (1) A shop worker may at any time give to his or her employer a written notice, signed and dated by the shop worker, to the effect that he or she objects to doing shop work for additional hours on Sunday.
- (2) In this Part—
  - “additional hours” means any number of hours of shop work that a shop worker is (or could be) required to work under a contract of employment on Sunday that are (or would be) in excess of the shop worker’s normal Sunday working hours;
  - “objection notice” means a notice given under subsection (1).
- (3) The “normal Sunday working hours” of a shop worker are to be calculated in accordance with regulations.
- (4) Regulations under this section may provide—
  - (a) for the calculation to be determined (for example) by reference to the average number of hours that the shop worker has worked on Sundays during a period specified or described in the regulations;
  - (b) for a calculation of the kind mentioned in paragraph (a) to be varied in special cases;

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- (c) for the right to give an objection notice not to be exercisable in special cases (and subsection (1) is subject to provision made by virtue of this paragraph).
- (5) Provision under subsection (4)(b) or (c) may, in particular, include provision
- (a) about how the calculation of normal Sunday working hours is to be made in the case of a shop worker who has not been employed for a sufficient period of time to enable a calculation to be made as otherwise provided for in the regulations;
  - (b) for the right to give an objection notice not to be exercisable by such a shop worker until he or she has completed a period of employment specified or described in the regulations.
- (6) But regulations under this section may not include provision preventing a shop worker who has been continuously employed under a contract of employment for a period of one year or more from giving to the employer an objection notice.
- (7) Regulations under this section may make different provision for different purposes.

#### **41B Explanatory statement: persons who become shop workers**

- (1) This section applies where a person becomes a shop worker who, under a contract of employment, is or may be required to do shop work on Sundays.
- (2) The employer must give to the shop worker a written statement informing the shop worker of the following rights—
  - (a) the right to object to working on Sundays by giving the employer an opting-out notice (if section 40 applies to the shop worker);
  - (b) the right to object to doing shop work for additional hours on Sundays by giving the employer an objection notice.
- (3) The statement must be given before the end of the period of two months beginning with the day on which the person becomes a shop worker as mentioned in subsection (1).
- (4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).
- (5) A statement under this section must comply with such requirements as to form and content as regulations may provide.
- (6) Regulations under this section may make different provision for different purposes.

#### **41C Explanatory statement: shop workers at commencement date**

- (1) This section applies where—
  - (a) under a contract of employment a shop worker is or may be required to do shop work on Sundays, and

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- (b) the shop worker was employed under that contract on the day before the commencement date.
- (2) The shop worker's employer must give to the shop worker a written statement informing the shop worker of the rights mentioned in section 41B(2).
- (3) The statement must be given before the end of the period of two months beginning with the commencement date.
- (4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).
- (5) A statement under this section must comply with such requirements as to form and content as regulations may provide.
- (6) Regulations under this section may make different provision for different purposes.
- (7) In this section "commencement date" means the date appointed by regulations under section 44 of the Enterprise Act 2016 for the coming into force of section 33 of, and Schedule 5 to, that Act.

#### **41D Failure to give explanatory statement under section 41B or 41C**

- (1) This section applies if an employer fails to give to a shop worker a written statement in accordance with—
    - (a) section 41B(2) and (3), or
    - (b) section 41C(2) and (3).
  - (2) If the shop worker gives to the employer an opting-out notice, the notice period under section 41(3) that applies in relation to the shop worker is varied as follows—
    - (a) if the notice period under that provision would have been one month, it becomes 7 days instead;
    - (b) if the notice period under that provision would have been three months, it becomes one month instead.
  - (3) If the shop worker gives to the employer an objection notice, the relevant period under section 43ZA(2) that applies in relation to the shop worker is varied as follows—
    - (a) if the relevant period under that provision would have been one month, it becomes 7 days instead;
    - (b) if the relevant period under that provision would have been three months, it becomes one month instead."
- 4 (1) Section 42 (explanatory statement) is amended as follows.
- (2) In the heading, after "statement" insert "betting workers".
  - (3) In subsection (1) omit "shop worker or".
  - (4) In subsection (2)—

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- (a) in paragraph (a) omit “shop worker or”;
  - (b) in paragraph (b)—
    - (i) after “the” omit “shop worker or”;
    - (ii) omit “an opted-out shop worker or”;
  - (c) in the words after paragraph (b), omit “shop worker or”.
- (5) In subsection (3) omit “shop worker or”.
- (6) Omit subsection (4).
- (7) In subsection (6)—
- (a) for “forms” substitute “form”;
  - (b) for “subsections (4) and (5)” substitute “subsection (5)”.
- 5 In the heading of section 43, after “work” insert “: opting-out notices”.
- 6 After section 43 (in Part 4) insert—

**“43ZA Contractual requirements relating to working additional hours on Sundays: objection notices**

- (1) Where a shop worker gives to his or her employer an objection notice, any agreement entered into between the shop worker and the employer becomes unenforceable to the extent that—
  - (a) it requires the shop worker to do shop work for additional hours on Sunday after the end of the relevant period, or
  - (b) it requires the employer to provide the shop worker with shop work for additional hours on Sunday after the end of that period.
- (2) The “relevant period” is—
  - (a) in the case of a shop worker who is or may be required to do shop work in or about a large shop, the period of one month beginning with the day on which the objection notice is given;
  - (b) in any other case, the period of three months beginning with that day.

This subsection is subject to section 41D(3).
- (3) A shop worker who has given an objection notice may revoke the notice by giving a further written notice to the employer.
- (4) Where—
  - (a) a shop worker gives to the employer a notice under subsection (3), and
  - (b) after giving the notice the shop worker expressly agrees with the employer to do shop work for additional hours on Sunday (whether on Sundays generally or on a particular Sunday),

the contract of employment between the shop worker and the employer is to be taken to be varied to the extent necessary to give effect to the terms of the agreement.
- (5) The reference in subsection (1) to any agreement—
  - (a) includes the contract of employment under which the shop worker is employed immediately before giving the objection notice;

- (b) includes an agreement of a kind mentioned in subsection (4), or a contract of employment as taken to be varied under that subsection, only if an objection notice is given in relation to the working of additional hours under that agreement or contract as varied.

#### **43ZB Interpretation**

- (1) In this Part—
  - “additional hours” has the meaning given in section 41A(2);
  - “large shop” means a shop which has a relevant floor area exceeding 280 square metres;
  - “objection notice” has the meaning given in section 41A(2);
  - “regulations” means regulations made by the Secretary of State.
- (2) In the definition of “large shop” in subsection (1)—
  - (a) “shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;
  - (b) “relevant floor area” means the internal floor area of so much of the large shop in question as consists of or is comprised in a building.
- (3) For the purposes of subsection (2), any part of the shop which is not used for the serving of customers in connection with the sale or display of goods is to be disregarded.
- (4) The references in subsections (2) and (3) to the sale of goods does not include—
  - (a) the sale of meals, refreshments or alcohol (within the meaning of the Licensing Act 2003 or, in relation to Scotland, the Licensing (Scotland) Act 2005 (asp 16)) for consumption on the premises on which they are sold, or
  - (b) the sale of meals or refreshments prepared to order for immediate consumption off those premises.”

7 After section 45 insert—

#### **“45ZA Sunday working for shop workers: additional hours**

- (1) Subsection (2) applies where a shop worker has given an objection notice to his or her employer and the notice has not been withdrawn.
- (2) The shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employer done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on Sunday or on a particular Sunday.
- (3) Subsection (2) does not apply to anything done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.
- (4) A shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer on the ground that the shop worker gave (or proposed to give) an objection notice to the employer.

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- (5) Subsections (2) and (4) do not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).
- (6) For the purposes of this section, a shop worker who does not do shop work for additional hours on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—
- (a) a failure to pay remuneration in respect of doing shop work for additional hours on Sunday which the shop worker has not done, or
  - (b) a failure to provide any other benefit where the failure results from the application (in relation to a Sunday on which the shop worker has not done shop work for additional hours) of a contractual term under which the extent of the benefit varies according to the number of hours worked by, or the remuneration paid to, the shop worker.
- (7) Subsections (8) and (9) apply where—
- (a) an employer offers to pay a sum specified in the offer to a shop worker if he or she agrees to do shop work for additional hours on Sunday or on a particular Sunday, and
  - (b) the shop worker—
    - (i) has given an objection notice to the employer that has not been withdrawn, or
    - (ii) is not obliged under a contract of employment to do shop work for additional hours on Sunday.
- (8) A shop worker to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure—
- (a) to make the offer to the shop worker, or
  - (b) to pay the shop worker the sum specified in the offer.
- (9) A shop worker who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay the shop worker the sum specified in the offer.
- (10) In this section—
- “additional hours” and “objection notice” have the meanings given by section 41A(2);
- “relevant period” means the period determined by section 43ZA(2) (but subject to section 41D(3)).”

8 In section 48 (complaints to employment tribunals), after subsection (1) insert—

“(1YA) A shop worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 45ZA.”

9 After section 101 insert—

**“101ZA Shop workers who refuse to work additional hours on Sunday**

- (1) Subsection (2) applies where a shop worker has given an objection notice that has not been withdrawn and he or she is dismissed.
- (2) The shop worker is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or the principal reason) for the dismissal is that he

or she refused, or proposed to refuse, to do shop work for additional hours on Sunday or on a particular Sunday.

(3) Subsection (2) does not apply where the reason (or principal reason) for the dismissal is that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.

(4) A shop worker who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or principal reason) for the dismissal is that the worker gave (or proposed to give) an objection notice to the employer.

(5) In this section—

“additional hours” and “objection notice” have the meanings given by section 41A(2);

“relevant period” means the period determined by section 43ZA(2) (but subject to section 41D(3)).”

10 In section 108 (qualifying period of employment), in subsection (3) after paragraph (d) insert—

“(da) subsection (2) of section 101ZA applies (read with subsection (3) of that section) or subsection (4) of that section applies.”.

11 In section 236 (orders and regulations), in subsection (3) after “27B,” insert “41A that include provision under subsection (4)(c) of that section.”.

### *Employment Act 2002*

12 In section 38 of the Employment Act 2002 (failure to give statement of employment particulars etc)—

(a) in subsection (2)(b), after “change)” insert “or under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday)”;

(b) in subsection (3)(b), after “1996” insert “or under section 41B or 41C of that Act”.