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STATUTORY INSTRUMENTS

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**1998 No. 1833**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Working Time Regulations 1998**

<i>Made</i>	- - - -	<i>30th July 1998</i>
<i>Laid before Parliament</i>		<i>30th July 1998</i>
<i>Coming into force</i>	- -	<i>1st October 1998</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to measures relating to the organization of working time<sup>(2)</sup> and measures relating to the employment of children and young persons<sup>(3)</sup>, in exercise of the powers conferred on him by that provision hereby makes the following Regulations—

**PART I**  
**GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Working Time Regulations 1998 and shall come into force on 1st October 1998.

(2) These Regulations extend to Great Britain only.

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996<sup>(4)</sup>;

“adult worker” means a worker who has attained the age of 18;

“the armed forces” means any of the naval, military and air forces of the Crown;

“calendar year” means the period of twelve months beginning with 1st January in any year;

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(1) 1972 c. 68.  
(2) S.I.1997/1174.  
(3) S.I. 1996/266.  
(4) 1996 c. 18.

“the civil protection services” includes the police, fire brigades and ambulance services, the security and intelligence services, customs and immigration officers, the prison service, the coastguard, and lifeboat crew and other voluntary rescue services;

“collective agreement” means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992(5), the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

“day” means a period of 24 hours beginning at midnight;

“employer”, in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;

“employment”, in relation to a worker, means employment under his contract, and “employed” shall be construed accordingly;

“night time”, in relation to a worker, means a period—

- (a) the duration of which is not less than seven hours, and
- (b) which includes the period between midnight and 5 a.m.,

which is determined for the purposes of these Regulations by a relevant agreement, or, in default of such a determination, the period between 11 p.m. and 6 a.m.;

“night work” means work during night time;

“night worker” means a worker—

- (a) who, as a normal course, works at least three hours of his daily working time during night time, or
- (b) who is likely, during night time, to work at least such proportion of his annual working time as may be specified for the purposes of these Regulations in a collective agreement or a workforce agreement;

and, for the purpose of paragraph (a) of this definition, a person works hours as a normal course (without prejudice to the generality of that expression) if he works such hours on the majority of days on which he works;

“relevant agreement”, in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer;

“relevant training” means work experience provided pursuant to a training course or programme, training for employment, or both, other than work experience or training—

- (a) the immediate provider of which is an educational institution or a person whose main business is the provision of training, and
- (b) which is provided on a course run by that institution or person;

“rest period”, in relation to a worker, means a period which is not working time, other than a rest break or leave to which the worker is entitled under these Regulations;

“worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

- (a) a contract of employment; or
- (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;

and any reference to a worker's contract shall be construed accordingly;

"worker employed in agriculture" has the same meaning as in the Agricultural Wages Act 1948<sup>(6)</sup> or the Agricultural Wages (Scotland) Act 1949<sup>(7)</sup>, and a reference to a worker partly employed in agriculture is to a worker employed in agriculture whose employer also employs him for non-agricultural purposes;

"workforce agreement" means an agreement between an employer and workers employed by him or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied;

"working time", in relation to a worker, means—

- (a) any period during which he is working, at his employer's disposal and carrying out his activity or duties,
- (b) any period during which he is receiving relevant training, and
- (c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement;

and "work" shall be construed accordingly;

"Working Time Directive" means Council Directive 93/104/EC of 23rd November 1993 concerning certain aspects of the organization of working time<sup>(8)</sup>;

"young worker" means a worker who has attained the age of 15 but not the age of 18 and who, as respects England and Wales, is over compulsory school age (construed in accordance with section 8 of the Education Act 1996)<sup>(9)</sup> and, as respects Scotland, is over school age (construed in accordance with section 31 of the Education (Scotland) Act 1980)<sup>(10)</sup>, and

"Young Workers Directive" means Council Directive 94/33/EC of 22nd June 1994 on the protection of young people at work<sup>(11)</sup>.

(2) In the absence of a definition in these Regulations, words and expressions used in particular provisions which are also used in corresponding provisions of the Working Time Directive or the Young Workers Directive have the same meaning as they have in those corresponding provisions.

(3) In these Regulations—

- (a) a reference to a numbered regulation is to the regulation in these Regulations bearing that number;
- (b) a reference in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number; and
- (c) a reference in a paragraph to a lettered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter.

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<sup>(6)</sup> 1948 c. 47.

<sup>(7)</sup> 1949 c. 30.

<sup>(8)</sup> O.J. No. L307, 13.12.93, p.18.

<sup>(9)</sup> 1996 c. 56.

<sup>(10)</sup> 1980 c. 44.

<sup>(11)</sup> O.J. No. L216, 20.8.94, p.12.

## PART II

### RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME

#### General

3. The provisions of this Part have effect subject to the exceptions provided for in Part III of these Regulations.

#### Maximum weekly working time

4.—(1) Subject to regulation 5, a worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each worker employed by him in relation to whom it applies.

(3) Subject to paragraphs (4) and (5) and any agreement under regulation 23(b), the reference periods which apply in the case of a worker are—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
- (b) in any other case, any period of 17 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) Paragraphs (3) and (4) shall apply to a worker who is excluded from the scope of certain provisions of these Regulations by regulation 21 as if for each reference to 17 weeks there were substituted a reference to 26 weeks.

(6) For the purposes of this regulation, a worker's average working time for each seven days during a reference period shall be determined according to the formula—

$$\frac{\mathbf{A + B}}{\mathbf{C}}$$

where—

**A** is the aggregate number of hours comprised in the worker's working time during the course of the reference period;

**B** is the aggregate number of hours comprised in his working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which he has worked equals the number of excluded days during the reference period; and

**C** is the number of weeks in the reference period.

(7) In paragraph (6), "excluded days" means days comprised in—

- (a) any period of annual leave taken by the worker in exercise of his entitlement under regulation 13;
- (b) any period of sick leave taken by the worker;
- (c) any period of maternity leave taken by the worker; and
- (d) any period in respect of which the limit specified in paragraph (1) did not apply in relation to the worker by virtue of regulation 5.

### **Agreement to exclude the maximum**

5.—(1) The limit specified in regulation 4(1) shall not apply in relation to a worker who has agreed with his employer in writing that it should not apply in his case, provided that the employer complies with the requirements of paragraph (4).

(2) An agreement for the purposes of paragraph (1)—

- (a) may either relate to a specified period or apply indefinitely; and
- (b) subject to any provision in the agreement for a different period of notice, shall be terminable by the worker by giving not less than seven days' notice to his employer in writing.

(3) Where an agreement for the purposes of paragraph (1) makes provision for the termination of the agreement after a period of notice, the notice period provided for shall not exceed three months.

(4) The requirements referred to in paragraph (1) are that the employer—

- (a) maintains up-to-date records which—
  - (i) identify each of the workers whom he employs who has agreed that the limit specified in regulation 4(1) should not apply in his case;
  - (ii) set out any terms on which the worker agreed that the limit should not apply; and
  - (iii) specify the number of hours worked by him for the employer during each reference period since the agreement came into effect (excluding any period which ended more than two years before the most recent entry in the records);
- (b) permits any inspector appointed by the Health and Safety Executive or any other authority which is responsible under regulation 28 for the enforcement of these Regulations to inspect those records on request; and
- (c) provides any such inspector with such information as he may request regarding any case in which a worker has agreed that the limit specified in regulation 4(1) should not apply in his case.

### **Length of night work**

6.—(1) A night worker's normal hours of work in any reference period which is applicable in his case shall not exceed an average of eight hours for each 24 hours.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each night worker employed by him.

(3) The reference periods which apply in the case of a night worker are—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
- (b) in any other case, any period of 17 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) For the purposes of this regulation, a night worker's average normal hours of work for each 24 hours during a reference period shall be determined according to the formula—

$$\frac{\mathbf{A}}{\mathbf{B} - \mathbf{C}}$$

where—

**A** is the number of hours during the reference period which are normal working hours for that worker;

**B** is the number of days during the reference period, and

**C** is the total number of hours during the reference period comprised in rest periods spent by the worker in pursuance of his entitlement under regulation 11, divided by 24.

(6) A night worker's normal hours of work for the purposes of this regulation are his normal working hours for the purposes of the 1996 Act in a case where section 234 of that Act (which provides for the interpretation of normal working hours in the case of certain employees) applies to him.

(7) An employer shall ensure that no night worker employed by him whose work involves special hazards or heavy physical or mental strain works for more than eight hours in any 24-hour period during which the night worker performs night work.

(8) For the purposes of paragraph (7), the work of a night worker shall be regarded as involving special hazards or heavy physical or mental strain if—

(a) it is identified as such in—

(i) a collective agreement, or

(ii) a workforce agreement,

which takes account of the specific effects and hazards of night work, or

(b) it is recognised in a risk assessment made by the employer under regulation 3 of the Management of Health and Safety at Work Regulations 1992(12) as involving a significant risk to the health or safety of workers employed by him.

### **Health assessment and transfer of night workers to day work**

7.—(1) An employer—

(a) shall not assign an adult worker to work which is to be undertaken during periods such that the worker will become a night worker unless—

(i) the employer has ensured that the worker will have the opportunity of a free health assessment before he takes up the assignment; or

(ii) the worker had a health assessment before being assigned to work to be undertaken during such periods on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid, and

(b) shall ensure that each night worker employed by him has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in his case.

(2) Subject to paragraph (4), an employer—

(a) shall not assign a young worker to work during the period between 10 p.m. and 6 a.m. ("the restricted period") unless—

(i) the employer has ensured that the young worker will have the opportunity of a free assessment of his health and capacities before he takes up the assignment; or

(ii) the young worker had an assessment of his health and capacities before being assigned to work during the restricted period on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid; and

(b) shall ensure that each young worker employed by him and assigned to work during the restricted period has the opportunity of a free assessment of his health and capacities at regular intervals of whatever duration may be appropriate in his case.

(3) For the purposes of paragraphs (1) and (2), an assessment is free if it is at no cost to the worker to whom it relates.

(4) The requirements in paragraph (2) do not apply in a case where the work a young worker is assigned to do is of an exceptional nature.

(5) No person shall disclose an assessment made for the purposes of this regulation to any person other than the worker to whom it relates, unless—

- (a) the worker has given his consent in writing to the disclosure, or
- (b) the disclosure is confined to a statement that the assessment shows the worker to be fit—
  - (i) in a case where paragraph (1)(a)(i) or (2)(a)(i) applies, to take up an assignment, or
  - (ii) in a case where paragraph (1)(b) or (2)(b) applies, to continue to undertake an assignment.

(6) Where—

- (a) a registered medical practitioner has advised an employer that a worker employed by the employer is suffering from health problems which the practitioner considers to be connected with the fact that the worker performs night work, and
- (b) it is possible for the employer to transfer the worker to work—
  - (i) to which the worker is suited, and
  - (ii) which is to be undertaken during periods such that the worker will cease to be a night worker,the employer shall transfer the worker accordingly.

### **Pattern of work**

8. Where the pattern according to which an employer organizes work is such as to put the health and safety of a worker employed by him at risk, in particular because the work is monotonous or the work-rate is predetermined, the employer shall ensure that the worker is given adequate rest breaks.

### **Records**

9. An employer shall—

- (a) keep records which are adequate to show whether the limits specified in regulations 4(1) and 6(1) and (7) and the requirements in regulations 7(1) and (2) are being complied with in the case of each worker employed by him in relation to whom they apply; and
- (b) retain such records for two years from the date on which they were made.

### **Daily rest**

10.—(1) An adult worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which he works for his employer.

(2) Subject to paragraph (3), a young worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which he works for his employer.

(3) The minimum rest period provided for in paragraph (2) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

### **Weekly rest period**

11.—(1) Subject to paragraph (2), an adult worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day period during which he works for his employer.

- (2) If his employer so determines, an adult worker shall be entitled to either—
- (a) two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which he works for his employer; or
  - (b) one uninterrupted rest period of not less than 48 hours in each such 14-day period,
- in place of the entitlement provided for in paragraph (1).
- (3) Subject to paragraph (8), a young worker is entitled to a rest period of not less than 48 hours in each seven-day period during which he works for his employer.
- (4) For the purpose of paragraphs (1) to (3), a seven-day period or (as the case may be) 14-day period shall be taken to begin—
- (a) at such times on such days as may be provided for for the purposes of this regulation in a relevant agreement; or
  - (b) where there are no provisions of a relevant agreement which apply, at the start of each week or (as the case may be) every other week.
- (5) In a case where, in accordance with paragraph (4), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular worker shall be taken to begin—
- (a) if the worker's employment began on or before the date on which these Regulations come into force, on 5th October 1998; or
  - (b) if the worker's employment begins after the date on which these Regulations come into force, at the start of the week in which that employment begins.
- (6) For the purposes of paragraphs (4) and (5), a week starts at midnight between Sunday and Monday.
- (7) The minimum rest period to which an adult worker is entitled under paragraph (1) or (2) shall not include any part of a rest period to which the worker is entitled under regulation 10(1), except where this is justified by objective or technical reasons or reasons concerning the organization of work.
- (8) The minimum rest period to which a young worker is entitled under paragraph (3)—
- (a) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration; and
  - (b) may be reduced where this is justified by technical or organization reasons, but not to less than 36 consecutive hours.

### **Rest breaks**

**12.—**(1) Where an adult worker's daily working time is more than six hours, he is entitled to a rest break.

(2) The details of the rest break to which an adult worker is entitled under paragraph (1), including its duration and the terms on which it is granted, shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.

(3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from his workstation if he has one.

(4) Where a young worker's daily working time is more than four and a half hours, he is entitled to a rest break of at least 30 minutes, which shall be consecutive if possible, and he is entitled to spend it away from his workstation if he has one.



(5) If, on any day, a young worker is employed by more than one employer, his daily working time shall be determined for the purpose of paragraph (4) by aggregating the number of hours worked by him for each employer.

### **Entitlement to annual leave**

**13.**—(1) Subject to paragraphs (5) and (7), a worker is entitled in each leave year to a period of leave determined in accordance with paragraph (2).

(2) The period of leave to which a worker is entitled under paragraph (1) is—

- (a) in any leave year beginning on or before 23rd November 1998, three weeks;
- (b) in any leave year beginning after 23rd November 1998 but before 23rd November 1999, three weeks and a proportion of a fourth week equivalent to the proportion of the year beginning on 23rd November 1998 which has elapsed at the start of that leave year; and
- (c) in any leave year beginning after 23rd November 1999, four weeks.

(3) A worker's leave year, for the purposes of this regulation, begins—

- (a) on such date during the calendar year as may be provided for in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply—
  - (i) if the worker's employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or
  - (ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.

(4) Paragraph (3) does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

(5) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.

(6) Where by virtue of paragraph (2)(b) or (5) the period of leave to which a worker is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(7) The entitlement conferred by paragraph (1) does not arise until a worker has been continuously employed for thirteen weeks.

(8) For the purposes of paragraph (7), a worker has been continuously employed for thirteen weeks if his relations with his employer have been governed by a contract during the whole or part of each of those weeks.

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

- (a) it may only be taken in the leave year in respect of which it is due, and
- (b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

### **Compensation related to entitlement to leave**

**14.**—(1) This regulation applies where—

- (a) a worker's employment is terminated during the course of his leave year, and

- (b) on the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.
- (2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).
- (3) The payment due under paragraph (2) shall be—
- (a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or
  - (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—
- $$(A \times B) - C$$
- where—
- A is the period of leave to which the worker is entitled under regulation 13(1);
- B is the proportion of the worker’s leave year which expired before the termination date, and
- C is the period of leave taken by the worker between the start of the leave year and the termination date.
- (4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.

### **Dates on which leave is taken**

- 15.—**(1) A worker may take leave to which he is entitled under regulation 13(1) on such days as he may elect by giving notice to his employer in accordance with paragraph (3), subject to any requirement imposed on him by his employer under paragraph (2).
- (2) A worker’s employer may require the worker—
- (a) to take leave to which the worker is entitled under regulation 13(1); or
  - (b) not to take such leave,
- on particular days, by giving notice to the worker in accordance with paragraph (3).
- (3) A notice under paragraph (1) or (2)—
- (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
  - (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
  - (c) shall be given to the employer or, as the case may be, the worker before the relevant date.
- (4) The relevant date, for the purposes of paragraph (3), is the date—
- (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and
  - (b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.
- (5) Any right or obligation under paragraphs (1) to (4) may be varied or excluded by a relevant agreement.

(6) This regulation does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

### **Payment in respect of periods of leave**

**16.**—(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13, at the rate of a week’s pay in respect of each week of leave.

(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week’s pay for the purposes of this regulation, subject to the modifications set out in paragraph (3).

(3) The provisions referred to in paragraph (2) shall apply—

- (a) as if references to the employee were references to the worker;
- (b) as if references to the employee’s contract of employment were references to the worker’s contract;
- (c) as if the calculation date were the first day of the period of leave in question; and
- (d) as if the references to sections 227 and 228 did not apply.

(4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract (“contractual remuneration”).

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Entitlements under other provisions**

**17.** Where during any period a worker is entitled to a rest period, rest break or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking a rest period, break or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

## **PART III EXCEPTIONS**

### **Excluded sectors**

**18.** Regulations 4(1) and (2), 6(1), (2) and (7), 7(1), and (6), 8, 10(1), 11(1) and (2), 12(1), 13 and 16 do not apply—

- (a) to the following sectors of activity—
  - (i) air, rail, road, sea, inland waterway and lake transport;
  - (ii) sea fishing;
  - (iii) other work at sea; or
- (b) to the activities of doctors in training, or
- (c) where characteristics peculiar to certain specific services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with the provisions of these Regulations.

### **Domestic service**

19. Regulations 4(1) and (2), 6(1), (2) and (7), 7(1), (2) and (6) and 8 do not apply in relation to a worker employed as a domestic servant in a private household.

### **Unmeasured working time**

20. Regulations 4(1) and (2), 6(1), (2) and (7), 10(1), 11(1) and (2) and 12(1) do not apply in relation to a worker where, on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself, as may be the case for—

- (a) managing executives or other persons with autonomous decision-taking powers;
- (b) family workers; or
- (c) workers officiating at religious ceremonies in churches and religious communities.

### **Other special cases**

21. Subject to regulation 24, regulations 6(1), (2) and (7), 10(1), 11(1) and (2) and 12(1) do not apply in relation to a worker—

- (a) where the worker's activities are such that his place of work and place of residence are distant from one another or his different places of work are distant from one another;
- (b) where the worker is engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, as may be the case for security guards and caretakers or security firms;
- (c) where the worker's activities involve the need for continuity of service or production, as may be the case in relation to—
  - (i) services relating to the reception, treatment or care provided by hospitals or similar establishments, residential institutions and prisons;
  - (ii) work at docks or airports;
  - (iii) press, radio, television, cinematographic production, postal and telecommunications services and civil protection services;
  - (iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration;
  - (v) industries in which work cannot be interrupted on technical grounds;
  - (vi) research and development activities;
  - (vii) agriculture;
- (d) where there is a foreseeable surge of activity, as may be the case in relation to—
  - (i) agriculture;
  - (ii) tourism; and
  - (iii) postal services;
- (e) where the worker's activities are affected by—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of the worker's employer;
  - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or
  - (iii) an accident or the imminent risk of an accident.

### **Shift workers**

22.—(1) Subject to regulation 24—

- (a) regulation 10(1) does not apply in relation to a shift worker when he changes shift and cannot take a daily rest period between the end of one shift and the start of the next one;
- (b) paragraphs (1) and (2) of regulation 11 do not apply in relation to a shift worker when he changes shift and cannot take a weekly rest period between the end of one shift and the start of the next one; and
- (c) neither regulation 10(1) nor paragraphs (1) and (2) of regulation 11 apply to workers engaged in activities involving periods of work split up over the day, as may be the case for cleaning staff.

(2) For the purposes of this regulation—

“shift worker” means any worker whose work schedule is part of shift work; and

“shift work” means any method of organizing work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.

### **Collective and workforce agreements**

23. A collective agreement or a workforce agreement may—

- (a) modify or exclude the application of regulations 6(1) to (3) and (7), 10(1), 11(1) and (2) and 12(1), and
- (b) for objective or technical reasons or reasons concerning the organization of work, modify the application of regulation 4(3) and (4) by the substitution, for each reference to 17 weeks, of a different period, being a period not exceeding 52 weeks,

in relation to particular workers or groups of workers.

### **Compensatory rest**

24. Where the application of any provision of these Regulations is excluded by regulation 21 or 22, or is modified or excluded by means of a collective agreement or a workforce agreement under regulation 23(a), and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period or rest break—

- (a) his employer shall wherever possible allow him to take an equivalent period of compensatory rest, and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him such protection as may be appropriate in order to safeguard the worker’s health and safety.

### **Workers in the armed forces**

25.—(1) Regulation 9 does not apply in relation to a worker serving as a member of the armed forces.

(2) Regulations 10(2) and 11(3) do not apply in relation to a young worker serving as a member of the armed forces.

(3) In a case where a young worker is accordingly required to work during a period which would otherwise be a rest period, he shall be allowed an appropriate period of compensatory rest.

### **Young workers employed on ships**

26. Regulations 7(2), 10(2), 11(3) and 12(4) do not apply in relation to a young worker whose employment is subject to regulation under section 55(2)(b) of the Merchant Shipping Act 1995(13).

### **Young workers: *force majeure***

27.—(1) Regulations 10(2) and 12(4) do not apply in relation to a young worker where his employer requires him to undertake work which no adult worker is available to perform and which—

- (a) is occasioned by either—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the employer’s control, or
  - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer;
- (b) is of a temporary nature; and
- (c) must be performed immediately.

(2) Where the application of regulation 10(2) or 12(4) is excluded by paragraph (1), and a young worker is accordingly required to work during a period which would otherwise be a rest period or rest break, his employer shall allow him to take an equivalent period of compensatory rest within the following three weeks.

## PART IV MISCELLANEOUS

### **Enforcement**

28.—(1) In this regulation and regulation 29—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(14);

“the relevant requirements” means the following provisions—

- (a) regulations 4(2), 6(2) and (7), 7(1), (2) and (6), 8 and 9; and
- (b) regulation 24, in so far as it applies where regulation 6(1), (2) or (7) is modified or excluded, and

“the relevant statutory provisions” has the same meaning as in the 1974 Act.

(2) It shall be the duty of the Health and Safety Executive to make adequate arrangements for the enforcement of the relevant requirements except to the extent that a local authority is made responsible for their enforcement by paragraph (3).

(3) Where the relevant requirements apply in relation to workers employed in premises in respect of which a local authority is responsible, under the Health and Safety (Enforcing Authority) Regulations 1998(15), for enforcing any of the relevant statutory provisions, it shall be the duty of that authority to enforce those requirements.

(4) The duty imposed on local authorities by paragraph (3) shall be performed in accordance with such guidance as may be given to them by the Health and Safety Commission.

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(13) 1995 c. 21.

(14) 1974 c. 37.

(15) S.I. 1998/494.

(5) The following provisions of the 1974 Act shall apply in relation to the enforcement of the relevant requirements as they apply in relation to the enforcement of the relevant statutory provisions, and as if any reference in those provisions to an enforcing authority were a reference to the Health and Safety Executive and any local authority made responsible for the enforcement of the relevant requirements—

- (a) section 19;
- (b) section 20(1), (2)(a) to (d) and (j) to (m), (7) and (8); and
- (c) sections 21, 22(16), 23(1), (2) and (5), 24 and 26; and
- (d) section 28, in so far as it relates to information obtained by an inspector in pursuance of a requirement imposed under section 20(2)(j) or (k).

(6) Any function of the Health and Safety Commission under the 1974 Act which is exercisable in relation to the enforcement by the Health and Safety Executive of the relevant statutory provisions shall be exercisable in relation to the enforcement by the Executive of the relevant requirements.

### Offences

**29.**—(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The following provisions of section 33(1) of the 1974 Act shall apply where an inspector is exercising or has exercised any power conferred by a provision specified in regulation 28(5)—

- (a) paragraph (e), in so far as it refers to section 20;
- (b) paragraphs (f) and (g);
- (c) paragraph (h), in so far as it refers to an inspector;
- (d) paragraph (j) in so far as it refers to section 28; and
- (e) paragraph (k).

(3) An employer guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) A person guilty of an offence under a provision of section 33(1) of the 1974 Act as applied by paragraph (2) shall be liable to the penalty prescribed in relation to that provision by subsection (2), (2A) or (3) of section 33(17), as the case may be.

(5) Sections 36(1), 37 to 39 and 42(1) to (3) of the 1974 Act shall apply in relation to the offences provided for in paragraphs (1) and (2) as they apply in relation to offences under the relevant statutory provisions.

### Remedies

**30.**—(1) A worker may present a complaint to an employment tribunal that his employer—

- (a) has refused to permit him to exercise any right he has under—
  - (i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4) or 13(1);
  - (ii) regulation 24, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is modified or excluded; or
  - (iii) regulation 25(3) or 27(2); or

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(16) Section 22 of the 1974 Act was amended by the Consumer Protection Act 1987 (c. 43), Schedule 3, paragraph 2.

(17) Subsection (2A) of section 33 of the 1974 Act was inserted by the Offshore Safety Act 1992 (c. 15), section 4(3).

- (b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).
- (2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—
  - (a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.
- (3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—
  - (a) shall make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the worker.
- (4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
  - (a) the employer’s default in refusing to permit the worker to exercise his right, and
  - (b) any loss sustained by the worker which is attributable to the matters complained of.
- (5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

### **Right not to suffer detriment**

**31.—**(1) After section 45 of the 1996 Act there shall be inserted—

#### **“Working time cases.**

**45A.—**(1) 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 the ground that the worker—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
- (d) being—
  - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
  - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate,



- (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
  - (f) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of subsection (1)(e) or (f)—
- (a) whether or not the worker has the right, or
  - (b) whether or not the right has been infringed,
- but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It is sufficient for subsection (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
- (4) This section does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X, unless the dismissal is in circumstances in which, by virtue of section 197, Part X does not apply.”
- (2) After section 48(1) of the 1996 Act there shall be inserted the following subsection—
- “(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.”
- (3) In section 49 of the 1996 Act(**18**) (remedies)—
- (a) in subsection (2), for “subsection (6)” there shall be substituted “subsections (5A) and (6)”, and
  - (b) after subsection (5), there shall be inserted—
- “(5A) Where—
- (a) the complaint is made under section 48 (1ZA),
  - (b) the detriment to which the worker is subjected is the termination of his worker’s contract, and
  - (c) that contract is not a contract of employment,
- any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 101A.”
- (4) In section 192(2) of the 1996 Act (provisions applicable in relation to service in the armed forces), after paragraph (a) there shall be inserted—
- “(aa) in Part V, section 45A, and sections 48 and 49 so far as relating to that section,”.
- (5) In sections 194(2)(c), 195(2)(c) and 202(2)(b) of the 1996 Act, for “sections 44 and 47” there shall be substituted “sections 44, 45A and 47”.
- (6) In section 200(1) of the 1996 Act (which lists provisions of the Act which do not apply to employment in police service), after “45,” there shall be inserted “45A,”.
- (7) In section 205 of the 1996 Act (remedy for infringement of certain rights), after subsection (1) there shall be inserted the following subsection—
- “(1ZA) In relation to the right conferred by section 45A, the reference in subsection (1) to an employee has effect as a reference to a worker.”

## Unfair dismissal

- 32.**—(1) After section 101 of the 1996 Act there shall be inserted the following section—

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(18) Section 49 of the 1996 Act was amended by the Public Interest Disclosure Act 1998 (c. 23), section 4.

**“Working time cases.**

**101A.** An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or
- (d) being—
  - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
  - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate.”

(2) In section 104 of the 1996 Act (right of employees not to be unfairly dismissed for asserting particular rights) in subsection (4)—

- (a) at the end of paragraph (b), the word “and” shall be omitted, and
- (b) after paragraph (c), there shall be inserted the words—

“and

(d) the rights conferred by the Working Time Regulations 1998.”

(3) In section 105 of the 1996 Act (redundancy as unfair dismissal), after subsection (4) there shall be inserted the following subsection—

“(4A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 101A.”

(4) In sections 108(3) and 109(2) of the 1996 Act, after paragraph (d) there shall be inserted—

“(dd) section 101A applies,”.

(5) In sections 117(4)(b), 118(3), 120(1), 122(3), 128(1)(b) and 129(1) of the 1996 Act, after “100(1)(a) and (b),” there shall be inserted “101A(d),”.

(6) In section 202(2) (cases where disclosure of information is restricted on ground of national security)—

- (a) in paragraph (g)(i), after “100” there shall be inserted “, 101A(d)”, and
- (b) in paragraph (g)(ii), after “of that section,” there shall be inserted “or by reason of the application of subsection (4A) in so far as it applies where the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal was that specified in section 101A(d)”.

(7) In section 209(2) of the 1996 Act (which lists provisions excluded from the scope of the power to amend the Act by order), after “101,” in paragraph (e) there shall be inserted “101A,”.

(8) In sections 237(1A) and 238(2A) of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(19)</sup> (cases where employee can complain of unfair dismissal notwithstanding industrial action at time of dismissal), after “100” there shall be inserted “, 101A(d)”.

(9) In section 10(5)(a) of the Employment Tribunals Act 1996<sup>(20)</sup> (cases where Minister’s certificate is not conclusive evidence that action was taken to safeguard national security), after “100” there shall be inserted “, 101A(d)”.

### **Conciliation**

**33.** In section 18(1) of the Employment Tribunals Act 1996 (cases where conciliation provisions apply)—

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

(b) after paragraph (f), there shall be inserted the words—

“or

(ff) under regulation 30 of the Working Time Regulations 1998.”.

### **Appeals**

**34.** In section 21 of the Employment Tribunals Act 1996 (jurisdiction of the Employment Appeal Tribunal)—

(a) at the end of subsection (1) (which confers jurisdiction by reference to Acts under or by virtue of which decisions are made) there shall be inserted—

“or under the Working Time Regulations 1998.”;

(b) in subsection (2), after “the Acts listed” there shall be inserted—

“or the Regulations referred to”.

### **Restrictions on contracting out**

**35.—**(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or

(b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal.

(2) Paragraph (1) does not apply to—

(a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation); or

(b) any agreement to refrain from instituting or continuing proceedings within section 18(1)(ff) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating compromise agreements under these Regulations are that—

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<sup>(19)</sup> 1992 c. 52: subsection (1A) of section 237 and subsection (2A) of section 238 were inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), Schedule 8, paragraphs 76 and 77.

<sup>(20)</sup> 1996 c. 17; section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) provides for the Industrial Tribunals Act 1996 to be cited as the Employment Tribunals Act 1996.

- (a) the agreement must be in writing,
  - (b) the agreement must relate to the particular complaint,
  - (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,
  - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
  - (e) the agreement must identify the adviser, and
  - (f) the agreement must state that the conditions regulating compromise agreements under these Regulations are satisfied.
- (4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—
- (a) if he is a qualified lawyer,
  - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
  - (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the worker—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
  - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
  - (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from him.
- (6) In paragraph (4)(a), “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990)**(21)**; and
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (7) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
  - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

## PART V

### SPECIAL CLASSES OF PERSON

#### **Agency workers not otherwise “workers”**

- 36.**—(1) This regulation applies in any case where an individual (“the agency worker”)—
- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangements made between the agent and the principal; but
  - (b) is not, as respects that work, a worker, because of the absence of a worker’s contract between the individual and the agent or the principal; and
  - (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.
- (2) In a case where this regulation applies, the other provisions of these Regulations shall have effect as if there were a worker’s contract for the doing of the work by the agency worker made between the agency worker and—
- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or
  - (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work,
- and as if that person were the agency worker’s employer.

#### **Crown employment**

- 37.**—(1) Subject to paragraph (4) and regulation 38, 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 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 a worker shall be construed as references to a person in Crown employment; and
  - (b) references to a worker’s contract shall be construed as references to the terms of employment of a person in Crown employment.
- (4) No act or omission by the Crown which is an offence under regulation 29 shall make the Crown criminally liable, but the High Court or, in Scotland, the Court of Session may, on the application of a person appearing to the Court to have an interest, declare any such act or omission unlawful.

#### **Armed forces**

- 38.**—(1) Regulation 37 applies—
- (a) subject to paragraph (2), 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<sup>(22)</sup>.

(2) No complaint concerning the service of any person as a member of the armed forces may be presented to an employment tribunal under regulation 30 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.

(3) For the purposes of paragraph (2)(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.

(4) Where a complaint of the kind referred to in paragraph (2) is presented to an employment tribunal, the service redress procedures may continue after the complaint is presented.

(5) In this regulation, “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955<sup>(23)</sup>, section 180 of the Air Force Act 1955<sup>(24)</sup> and section 130 of the Naval Discipline Act 1957<sup>(25)</sup><sup>(26)</sup>.

#### **House of Lords staff**

**39.**—(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) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Lords staff from presenting a complaint to an employment tribunal under regulation 30.

(3) In this regulation “relevant member of the House of Lords staff” means any person who is employed under a worker’s contract with the Corporate Officer of the House of Lords.

#### **House of Commons staff**

**40.**—(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.

(2) For the purposes of the application of the provisions of these Regulations in relation to a relevant member of the House of Commons staff—

(a) references to a worker shall be construed as references to a relevant member of the House of Commons staff; and

(b) references to a worker’s contract shall be construed as references to the terms of employment of a relevant member of the House of Commons staff.

(3) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from presenting a complaint to an employment tribunal under regulation 30.

(4) 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.

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<sup>(22)</sup> 1996 c. 14.

<sup>(23)</sup> 1955 c. 18.

<sup>(24)</sup> 1955 c. 19.

<sup>(25)</sup> 1957 c. 53.

<sup>(26)</sup> Each of the sections referred to in paragraph (5) was substituted by section 20 of the Armed Forces Act 1996 (c. 46).

### **Police service**

**41.**—(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 worker’s contract, by the relevant officer.

(2) Any matter relating to the employment of a worker which may be provided for for the purposes of these Regulations in a workforce agreement may be provided for for the same purposes in relation to the service of a person holding the office of constable or an appointment as a police cadet by an agreement between the relevant officer and a joint branch board.

(3) In this regulation—

“a joint branch board” means a joint branch board constituted in accordance with regulation 7(3) of the Police Federation Regulations 1969<sup>(27)</sup> or regulation 7(3) of the Police Federation (Scotland) Regulations 1985<sup>(28)</sup>, and

“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<sup>(29)</sup> (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.

### **Non-employed trainees**

**42.** For the purposes of these Regulations, a person receiving relevant training, otherwise than under a contract of employment, shall be regarded as a worker, and the person whose undertaking is providing the training shall be regarded as his employer.

### **Agricultural workers**

**43.** The provisions of Schedule 2 have effect in relation to workers employed in agriculture.

30th July 1998

*Ian McCartney*  
Minister of State,  
Department of Trade and Industry

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<sup>(27)</sup> S.I. 1969/1787, to which there are amendments not relevant to these Regulations.

<sup>(28)</sup> S.I. 1985/1531, to which there are amendments not relevant to these Regulations.

<sup>(29)</sup> 1997 c. 16.

## SCHEDULE 1

Regulation 2

## WORKFORCE AGREEMENTS

1. An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied—

- (a) the agreement is in writing;
- (b) it has effect for a specified period not exceeding five years;
- (c) it applies either—
  - (i) to all of the relevant members of the workforce, or
  - (ii) to all of the relevant members of the workforce who belong to a particular group;
- (d) the agreement is signed—
  - (i) in the case of an agreement of the kind referred to in sub-paragraph (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in sub-paragraph (c)(ii) by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature), or
  - (ii) if the employer employed 20 or fewer workers on the date referred to in sub-paragraph (d)(i), either by the appropriate representatives in accordance with that sub-paragraph or by the majority of the workers employed by him;
- (e) before the agreement was made available for signature, the employer provided all the workers to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those workers might reasonably require in order to understand it fully.

2. For the purposes of this Schedule—

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“relevant members of the workforce” are all of the workers employed by a particular employer, excluding any worker whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are workers duly elected to represent the relevant members of the workforce, “representatives of the group” are workers duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of the workforce are relevant members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no worker who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group;



- (e) the workers entitled to vote may vote for as many candidates as there are representatives to be elected;
- (f) the election is conducted so as to secure that—
  - (i) so far as is reasonably practicable, those voting do so in secret, and
  - (ii) the votes given at the election are fairly and accurately counted.

## SCHEDULE 2

Regulations 13(4), 15(6) and 43

### WORKERS EMPLOYED IN AGRICULTURE

1. Except where, in the case of a worker partly employed in agriculture, different provision is made by a relevant agreement—
  - (a) for the purposes of regulation 13, the leave year of a worker employed in agriculture begins on 6th April each year or such other date as may be specified in an agricultural wages order which applies to him; and
  - (b) the dates on which leave is taken by a worker employed in agriculture shall be determined in accordance with an agricultural wages order which applies to him.
2. Where, in the case referred to in paragraph 1 above, a relevant agreement makes provision different from sub-paragraph (a) or (b) of that paragraph—
  - (a) neither section 11 of the Agricultural Wages Act 1948<sup>(30)</sup> nor section 11 of the Agricultural Wages (Scotland) Act 1949<sup>(31)</sup> shall apply to that provision; and
  - (b) an employer giving effect to that provision shall not thereby be taken to have failed to comply with the requirements of an agricultural wages order.
3. In this Schedule, “an agricultural wages order” means an order under section 3 of the Agricultural Wages Act 1948 or section 3 of the Agricultural Wages (Scotland) Act 1949.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Directive [93/104/EC](#) concerning certain aspects of the organization of working time (O.J. No. L307, 13.12.93, p.18) and provisions concerning working time in Council Directive [94/33/EC](#) on the protection of young people at work (O.J. No. L216, 20.8.94, p.12). The provisions in the latter Directive which are implemented relate only to adolescents (those aged between 15 and 18 who are over compulsory school age); provisions in that Directive relating to children were implemented by the Children (Protection at Work) Regulations 1998 ([S.I.1998/276](#)). Provisions implementing that Directive in relation to adolescents employed on ships are to be included in separate regulations to be made shortly after the date on which these

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<sup>(30)</sup> 1948 c. 47.

<sup>(31)</sup> 1949 c. 30.

Regulations are made, and adolescents employed on ships are accordingly excluded from the scope of these Regulations (regulation 26).

Regulations 4 to 9 in these Regulations impose obligations on employers, enforceable by the Health and Safety Executive and local authorities; failure to comply is an offence. The obligations concern the maximum average weekly working time of workers (subject to provision for individual workers to agree that the maximum should not apply to them), the average normal hours of night workers, the provision of health assessments for night workers, and rest breaks to be given to workers engaged in certain kinds of work; employers are also required to keep records of workers' hours of work.

Regulations 10 to 17 confer rights on workers, enforceable by proceedings before employment tribunals. The rights are to a rest period in every 24 hours during which a worker works for his employer and longer rest periods each week or fortnight, to a rest break in the course of a working day, and to a period of paid annual leave.

Regulations 18 to 27 provide for particular regulations not to apply, either in relation to workers engaged in certain kinds of work or where particular circumstances arise. There is also provision for groups of workers and their employers to agree to modify or exclude the application of particular regulations.

The remaining regulations make provision in relation to enforcement and remedies, and in respect of agency workers, Crown servants, Parliamentary staff, the police, trainees and agricultural workers. The Employment Rights Act 1996 is amended to include a right for workers not to be subjected to any detriment for refusing to comply with a requirement contrary to these Regulations or to forgo a right conferred by them, and to provide that the dismissal of an employee on account of any such refusal is unfair dismissal for the purposes of the Act.