

Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No. XXXX

TERMS AND CONDITIONS OF EMPLOYMENT

The Exclusivity Terms in Zero Hours
Contracts (Redress) Regulations 2015

Made - - - - ***
Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 27B(1) and (5) and 209(1) of the Employment Rights Act 1996(1), makes the following Regulations.

A draft of these Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996(2) and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015.

(2) These Regulations come into force at the end of the period of 28 days beginning with the day on which they are made.

(3) In these Regulations “the 1996 Act” means the Employment Rights Act 1996.

Unfair dismissal and the right not to be subjected to detriment

2.—(1) An employee who works under a zero hours contract is to be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is the reason specified in paragraph (3).

(2) A worker who works under a zero hours contract has the right not to be subjected to any detriment by, or as a result of, any act, or any deliberate failure to act, of an employer done for the reason specified in paragraph (3).

(3) The reason is that the worker breached a provision or purported provision of the zero hours contract to which section 27A(3)(3) of the 1996 Act applies.

(1) 1996 c.18; section 27B was inserted by the Small Business, Enterprise and Employment Act (c.26), section 153(1) and (2).
(2) Section 236(3) was amended by the Small Business, Enterprise and Employment Act, section 153(1) and (3).
(3) Section 27A was inserted by the Small Business, Enterprise and Employment Act, section 153(1) and (2).

(4) Paragraph (2) does not apply where the detriment in question amounts to a dismissal of an employee within the meaning of Part 10 of the 1996 Act.

(5) Section 108 of the 1996 Act (qualifying period of employment and upper age limit) does not apply in relation to a dismissal to which paragraph (1) applies.

Complaints to employment tribunals

3.—(1) Subject to regulation 2(4), a worker may present a complaint to an employment tribunal that an employer has infringed the right conferred on the worker by regulation 2(2).

(2) Subject to paragraph (3), an employment tribunal must not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, 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 paragraph (2)—

- (a) where an act extends over a period, the “date of the act” means the last day of that period; and
- (b) failure to do something is to be treated as occurring when the person in question decided on it.

(5) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

- (a) when P does an act inconsistent with doing it, or
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

(6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground on which any act, or deliberate failure to act, was done.

Remedies

4.—(1) Where an employment tribunal finds that a complaint presented to it under regulation 3 is well founded, it must 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; and
- (b) ordering the employer to pay compensation to the complainant.

(2) Subject to paragraphs (5) and (6), where a tribunal orders compensation under paragraph (1) (b), the amount of the compensation awarded must be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement to which the complaint relates; and
- (b) any loss which is attributable to the act, or failure to act, which infringed the complainant’s right.

(3) The loss must be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and
- (b) loss of any benefit which the complainant might reasonably be expected to have had but for that act or failure to act.

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

(5) Where—

- (a) the detriment to which the worker is subjected is the termination of the worker’s contract, but
- (b) that contract is not a contract of employment,

any compensation awarded under paragraph (1)(b) must not exceed the limit specified in paragraph (6).

(6) The limit is the total of—

- (a) the sum which would be the basic award for unfair dismissal, calculated in accordance with section 119 of the 1996 Act, if the worker had been an employee and the contract terminated had been a contract of employment; and
- (b) the sum for the time being specified in section 124(1ZA)(4) of the 1996 Act which is the limit for a compensatory award to a person calculated in accordance with section 123 of the 1996 Act.

(7) 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 must reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

Review

5.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 2 to 4;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of five years beginning with the day on which regulations 2 to 4 come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Date

Name
Minister of State for Skills
Department for Business, Innovation and Skills

(4) Section 124(1ZA) was inserted by the Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013, S.I. 2013/1949, articles 2(1) and (3). Section 124(1ZA)(a) was amended by the Employment Rights (Increase of Limits) Order 2015, S.I. 2015/226, Article 3, Schedule.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 27A(3) of the Employment Rights Act 1996 ('the 1996 Act') provides that a provision in a zero hours contract which prohibits the worker from doing work under any other arrangement is unenforceable.

Regulation 2 of these Regulations makes provision in relation to the right for individuals on a zero hours contract not to be unfairly dismissed or subjected to a detriment for a reason relating to a breach of a provision of a zero hours contract to which section 27A(3) of the 1996 Act applies.

Regulations 3 and 4 provide remedies for individuals, including compensation, by way of proceedings in employment tribunals.

Regulation 5 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Innovation and Skills and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.