

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, and section 12(5) of the Employment Agencies Act 1973, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. XXXX

**EXITING THE EUROPEAN UNION
TERMS AND CONDITIONS OF EMPLOYMENT**

**The Employment Rights (Amendment)
(EU Exit) (No. 2) Regulations 2018**

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

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽¹⁾, and section 5(1) of the Employment Agencies Act 1973⁽²⁾.

In accordance with paragraph 1 of Schedule 7 to the European Union (Withdrawal) Act 2018, and section 12(5) of the Employment Agencies Act 1973, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with section 12(2) of the Employment Agencies Act 1973 the Secretary of State has consulted, on the amendments provided for in Part 2 of the Schedule to these Regulations, with such bodies as appear to the Secretary of State to be representative of the interests concerned.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Employment Rights (Amendment) (EU Exit) (No. 2) Regulations 2018 and come into force on exit day.

(2) Any amendment by these Regulations of an enactment has the same extent as the enactment amended.

Amendments to employment rights legislation

2. The Schedule (which amends employment rights legislation extending to England and Wales and Scotland, and contains a saving provision) has effect.

(1) 2018 c. 16.
(2) 1973 c. 35.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: *The Employment Rights (Amendment) (EU Exit) (No. 2) Regulations 2019 No. 536*

Date

Name
Minister for Small Business, Consumers and
Corporate Responsibility
Department for Business, Energy and Industrial
Strategy

SCHEDULE

Regulation 2

AMENDMENTS TO EMPLOYMENT RIGHTS LEGISLATION EXTENDING TO ENGLAND AND WALES, AND SCOTLAND

PART 1

AMENDMENTS TO PRIMARY LEGISLATION

The Employment Relations Act 1999

1. In section 38 (transfer of undertakings) of the Employment Relations Act 1999⁽³⁾ for subsections (1) and (2) substitute—

“(1) The Secretary of State may by regulations make TUPE-like provision in relation to the treatment of employees in circumstances other than those to which the main part of the TUPE regulations applies.

(2) In this section—

(a) the “main part of the TUPE regulations” means so much of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) as relates to the treatment of employees on the transfer of an undertaking, business or part of an undertaking or business;

(b) “TUPE-like provision” means provision which is the same or similar to that made by the main part of the TUPE regulations.

(2A) The circumstances mentioned in subsection (1) include circumstances in which there is no transfer, or no transfer to which the main part of the TUPE regulations applies.”.

The Work and Families Act 2006

2. In section 13 of the Work and Families Act 2006⁽⁴⁾ (annual leave)—

(a) omit subsection (2)(g),

(b) omit subsection (4)(b), and

(c) in subsection (8), omit the definition of “the 1972 Act”.

PART 2

AMENDMENTS TO SECONDARY LEGISLATION

Conduct of Employment Agencies and Employment Businesses Regulations 2003

3. In Regulation 27A (advertising in other EEA states) of the Conduct of Employment Agencies and Employment Businesses Regulations 2003⁽⁵⁾—

(a) in the introductory words of paragraph (1) omit “other than the United Kingdom”; and

(b) in the heading and in paragraph (1)(a) and (b) omit “other” at each place it appears.

⁽³⁾ 1999 c. 26.

⁽⁴⁾ 2006 c. 18.

⁽⁵⁾ S.I. 2003/3319.

PART 3

SAVING PROVISION

4. The amendments made by Part 1 of this Schedule do not affect the validity of any regulations that came into force before exit day and were made under any of the Acts amended by that Part.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of, and Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) and section 5(1) of the Employment Agencies Act 1973 (c. 35), in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a) and (g) of section 8(2) of the European Union (Withdrawal) Act 2018) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of employment rights, removing (or amending) references that are no longer appropriate once the UK has exited the EU.

Part 1 of the Schedule makes amendments to primary legislation. Firstly, to section 38 of the Employment Relations Act 1999 which currently provides a power to the Secretary of State to make regulations in certain circumstances where EU obligations relating to the treatment of employees on the transfer of all or part of an undertaking or business do not apply. The amendments do not change the scope of the power but ensure the wording used is appropriate once the UK has exited the EU. Secondly, Part 1 amends the Work and Families Act 2006, removing powers for the Secretary of State to make regulations (relating to annual leave), which are no longer appropriate once the UK has exited the EU. The savings provision in Part 3 ensures that these amendments do not affect the validity of any regulations, that came into force before exit day and were made under either of those Acts.

Part 2 of the Schedule makes amendments to secondary legislation. Regulation 27A of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 is amended to reflect the fact that the UK will no longer be a member of the EEA, following exit from the EU.

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen.