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STATUTORY INSTRUMENTS

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**2018 No. 1378**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018**

<i>Made</i>	- - - -	<i>17th December 2018</i>
<i>Laid before Parliament</i>		<i>17th December 2018</i>
<i>Coming into force</i>	- -	<i>6th April 2020</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to employment rights and duties<sup>(2)</sup> and measures relating to the organisation of working time<sup>(3)</sup>.

The Secretary of State, in exercise of the powers conferred by sections 7 and 236(5) of the Employment Rights Act 1996<sup>(4)</sup> and section 2(2) of the European Communities Act 1972, makes the following Regulations.

**PART 1**

**CITATION AND COMMENCEMENT**

**Citation and commencement**

**1.** These Regulations may be cited as The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 and come into force on 6th April 2020.

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(1) [1972 c. 68](#). Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and the European Union (Amendment) Act [2008 \(c. 7\)](#), Schedule 1.  
(2) [S.I. 2000/738](#).  
(3) [S.I. 1997/1174](#).  
(4) [1996 c. 18](#).

## PART 2

### EMPLOYMENT PARTICULARS

#### Amendment to the Employment Rights Act 1996

2. The Employment Rights Act 1996 is amended as follows.

#### Amendment of section 1

3. In section 1 (statement of initial employment particulars)—
- (a) for subsection (2) substitute—
    - “(2) Subject to sections 2(2) to (4)—
      - (a) the particulars required by subsections (3) and (4) must be included in a single document; and
      - (b) the statement must be given not later than the beginning of the employment.”;
  - (b) in subsection (4)—
    - (i) in the words immediately before paragraph (a) for “(or the instalment containing them)” substitute “(or the instalment of a statement given under section 2(4) containing them)”;
    - (ii) for paragraph (c), substitute—
      - “(c) any terms and conditions relating to hours of work including any terms and conditions relating to—
        - (i) normal working hours,
        - (ii) the days of the week the worker is required to work, and
        - (iii) whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined.”;
    - (iii) at the end of paragraph (d)(ii), omit “and” and insert—
      - “(iia) any other paid leave, and”;
    - (iv) after paragraph (d) insert—
      - “(da) any other benefits provided by the employer that do not fall within another paragraph of this subsection,”;
    - (v) after paragraph (g) insert—
      - “(ga) any probationary period, including any conditions and its duration,”;
    - (vi) in paragraph (j), omit the final “and”;
    - (vii) after paragraph (k) insert—
      - “(l) any training entitlement provided by the employer,
      - (m) any part of that training entitlement which the employer requires the worker to complete, and
      - (n) any other training which the employer requires the worker to complete and which the employer will not bear the cost of.”.
    - (viii) after subsection (5) insert—
      - “(6) In this section “probationary period” means a temporary period specified in the contract of employment or other worker’s contract between a worker and an employer that—

- (a) commences at the beginning of the employment, and
- (b) is intended to enable the employer to assess the worker’s suitability for the employment.”.

#### **Amendment of section 2**

- 4. In section 2 (statement of initial particulars: supplementary)—
  - (a) in subsection (2) for “subsection (4)(d)(ii) and (iii)” substitute “subsection (4)(d)(ii) to (iii) and (l)”;
  - (b) for subsection (4) substitute—
    - “(4) A statement, insofar as it relates to the particulars required by section 1(4)(d)(iii), (j) and (l) and the note required by section 3—
      - (a) may be given in instalments; and
      - (b) must be given not later than two months after the beginning of the employment, even where the employment ends before that date. ”;
  - (c) in subsection (5) for “the statement under section 1” substitute “any instalment of a statement given under subsection (4)”;
  - (d) omit subsection (6).

#### **Amendment of section 4**

- 5. In section 4 (statement of changes)—
  - (a) in subsection 2(a) omit the words “otherwise than in instalments”;
  - (b) in subsection (2)(b)(i) for “section 1 or” substitute “section 2(4)”;
  - (c) omit subsection (2)(b)(ii);
  - (d) in subsection (4), for “sections 1(4)(d)(ii) and (iii)” substitute “sections 1(4)(d)(ii) to (iii)”.

#### **Amendment of section 7A**

- 6. In section 7A(1) (use of alternative documents to give particulars)(5)—
  - (a) in paragraph (b) for “in subsections (3) and (4) (a) to (c), (d)(i), (f) and (h) of that section” substitute “in that section save for the particulars specified in section 2(4) and”;
  - (b) for paragraph (c) substitute—
    - “(c) the document is given not later than the beginning of the employment.”

#### **Repeal of section 198**

- 7. Section 198 (short-term employment) is repealed.

#### **Application**

8. Subject to regulation 9, the amendments made by regulations 2 to 6 only apply in relation to a written statement required by section 1 or 4 of the Employment Rights Act 1996 where the worker to whom the statement must be given begins employment with the employer on or after 6 April 2020.

## Transitional

9.—(1) Schedule 2 to the Employment Rights Act 1996 (transitional provisions and savings) is amended as follows.

(2) In paragraph 7—

- (a) in the heading, after “Employment particulars” insert “for pre-TURERA employees”;
- (b) in sub-paragraph (2), after “this paragraph” insert “and paragraph 7B”;
- (c) in sub-paragraph (3), in the words before paragraph (a), after “time” insert “before 6 April 2020”.

(3) After paragraph 7 insert—

*“7A. Employment particulars for pre-6 April 2020 employees*

(1) In this paragraph an “existing employee” means an employee whose employment with his employer began on or after 30th November 1993 and before 6th April 2020.

(2) Subject to paragraph 7B, sections 1 to 7 of this Act apply to an existing employee without the amendments made by regulations 2 to 6 of the Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018.

*7B. Request for employment particulars by pre-6 April 2020 employee or pre-TURERA employee*

(1) Where an existing employee (as defined in paragraph 7A(1)) or a pre-TURERA employee (as defined in paragraph 7(1)) at any time—

- (a) on or after 6 April 2020, and
- (b) either before the end of the employee’s employment or within the period of three months beginning with the day on which the employee’s employment ends,

requests from the employer a statement under section 1 of this Act, the employer shall (subject to section 5 and any other provisions disapplying or having the effect of disapplying sections 1 to 4) be treated as being required by section 1 to give him a written statement under that section not later than 1 month after the request is made and section 4 of this Act shall (subject to that) apply in relation to the employee after he makes the request.

(4) An employer is not required to give an existing employee or a pre-TURERA employee a statement under section 1 pursuant to sub-paragraph (1) on more than one occasion.

(5) Where—

- (a) on or after 6 April 2020 there is in the case of an existing employee or a pre-TURERA employee a change in any of the matters particulars of which would, had they have been given a statement of particulars on or after 6 April 2020 under section 1 of this Act (as amended), have been included or referred to in the statement, and
- (b) he has not previously requested a statement under sub-paragraph (1),

subsection (1) of section 4 of this Act shall be treated (subject to section 5 and any other provision disapplying or having the effect of disapplying section 4) as requiring his employer to give him a written statement containing particulars of the change at the time specified in subsection (3) of section 4; and the other provisions of section 4 apply accordingly.

(6) A reference in this paragraph to section 1 or section 4 is a reference to that section as amended by the Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018.”.

## PART 3

### PAID ANNUAL LEAVE

#### Amendments to regulation 16 of the Working Time Regulations 1998

- 10.**—(1) Regulation 16 of the Working Time Regulations 1998(6) is amended as follows.
- (2) At the end of paragraph (2) insert “and the exception in paragraph (3A)”.
- (3) In paragraph (3)—
- (a) in sub-paragraph (c) omit “and”;
  - (b) after sub-paragraph (d) insert—
    - “(e) subject to the exception in sub-paragraph (f)(ii), as if in sections 221(3), 222(3) and (4), 223(2) and 224(2) and (3) references to twelve were references to—
      - (i) in the case of a worker who on the calculation date has been employed by their employer for less than 52 complete weeks, the number of complete weeks for which the worker has been employed, or
      - (ii) in any other case, 52; and
    - (f) in any case where section 223(2) or 224(3) applies as if—
      - (i) account were not to be taken of remuneration in weeks preceding the period of 104 weeks ending—
        - (aa) where the calculation date is the last day of a week, with that week, and
        - (bb) otherwise, with the last complete week before the calculation date; and
      - (ii) the period of weeks required for the purposes of sections 221(3), 222(3) and (4) and 224(2) was the number of weeks of which account is taken.”.
- (4) After paragraph (3) insert—
- “(3A) In any case where applying sections 221 to 224 of the 1996 Act subject to the modifications set out in paragraph (3) gives no weeks of which account is taken, the amount of a week’s pay is not to be determined by applying those sections, but is the amount which fairly represents a week’s pay having regard to the considerations specified in section 228(3) as if references in that section to the employee were references to the worker.
- (3B) For the purposes of paragraphs (3) and (3A) “week” means, in relation to a worker whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other worker, a week ending with Saturday.”.

*Henley*  
Parliamentary Under Secretary of State  
Department for Business, Energy and Industrial  
Strategy

17th December 2018

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

Part 2 of these Regulations makes the right to a written statement of particulars of employment apply when an individual begins employment (a day 1 right). Currently the written statement of particulars of employment is only required to be given by the employer not later than two months after the beginning of the employment. The regulations provide that employers can decide to provide particulars in instalments providing all are provided within 2 months and the majority are provided when the individual begins employment. Part 2 also inserts additional matters particulars of which must be included in the written statement.

In relation to the amendments conferring a day 1 right to written particulars of employment and additional provisions to individuals in Part 1 of the Employment Rights Act 1996, a full regulatory impact assessment of the effect that the amendments will have on the cost of business and the voluntary sector is available from the Labour Market Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET, and is available alongside the Explanatory Memorandum which is also available alongside the instrument on the [www.legislation.gov.uk](http://www.legislation.gov.uk).

Part 3 of these Regulations amends the Working Time Regulations 1998. The Working Time Regulations 1998 implement Council [Directive 2003/88/EC](#) (O.J. No L229 18.11.2003, p.9) (which consolidates [Directive 93/104/EC](#) (O.J. No. L307, 13.12.93, p18) as amended by Council [Directive 2000/34/EC](#) (O.J. No L195, 01.08.2000, p.41) as from 2 August 2004).

The Working Time Regulations 1998 entitle workers to paid annual leave (amongst other things). Regulation 16(2) of those Regulations specifies that the pay due is calculated by applying sections 221 to 224 of the Employment Rights Act 1996 (c. 18), which provide for the calculation of a week's pay. The application of those sections is subject to specified modifications set out in regulation 16(3). These Regulations amend regulation 16(3) to change the reference period that applies for calculating an average week's pay where a worker has variable remuneration, either because there are normal working hours but the remuneration varies with the amount of work done or the time the work is done, or because the worker does not have normal working hours. Where a worker has been employed by their employer for at least 52 weeks, the reference period is increased from 12 weeks to 52 weeks. Where a worker has been employed by their employer for less than 52 weeks, the reference period is the number of weeks for which the worker has been employed.

Regulation 16(3) is also amended so that where earlier weeks must be brought into account because the reference period contains weeks in which no remuneration was payable, no account is taken of weeks preceding the 104 weeks before the beginning of the period of leave. Where this gives fewer than 52 weeks to take into account, the reference period is reduced to that lower number of weeks.

Where applying sections 221 to 224 as modified by regulation 16(3) gives no weeks to take into account, a week's pay is not calculated by applying those sections, but is instead the amount which fairly represents a week's pay, having regard to certain considerations specified in section 228(3).

A full regulatory impact assessment has not been produced for Part 3 as it has only marginal, if any, impact on the costs of business, charities or voluntary bodies.